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JOINT APPENDIX

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IN THE

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Court of Appeals
for the
District of Columbia Circuit
FILED JAN - 3 1957
Joseph D. Stewart
Clerk

No. 13,198

MISSISSIPPI RIVER FUEL CORPORATION,
*Petitioner,*

v.

FEDERAL POWER COMMISSION,
*Respondent.*

Petition for Review of Order of the Federal Power Commission

Volume I

Transcript of Testimony

(Joint Appendix Pages 1-325; Record Pages 55-1378)

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**Petition for Review of Order of the Federal Power Commission**

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## JOINT APPENDIX

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**Volume I**

**Transcript of Testimony**

**(Joint Appendix Pages 1-380; Record Pages 55-1378)**

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**Excerpt from Transcript of Hearing Held August 17, 1954**

Mr. Fletcher: Mr. Examiner, as you know, these proceedings have been pending and there have been over the past two or three years a successive series of hearings that have been recessed from time to time. While those hearings have been going on, in the case of some of the exhibits, as the record reflects and as you know, there have been working papers which were not offered in order not to encumber the record, but which were made available to the Staff.

The hearings, of course, have been long, they have been arduous, they have been complicated, as this matter

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necessarily is complicated. In the effort to reconcile figures and reconcile information, the question of this settlement developed. There were a series of conferences which were attended by Mr. N. C. McGowen, the president of United. After a series of those conferences, Mr. McGowen came to the conclusion that quite aside from the time which would be requisite for the determination of the issues that existed between where there was controversy and where there was lack of agreement on the issues which would control in some of the phases of the matter, that it was in the interest of certainly United, and he felt it was in the interest of United's customers, and the Staff agreed that it was in the public interest and in the interest of the matter as they viewed it, for these matters to be brought to composition and to balance.

At the time it arrived at that stage of the proceeding, the Staff had prepared and presented to Mr. McGowen what has been here offered as Exhibits 77, 78 and 79—though with respect to 79 the record should reflect, Mr. Examiner, that as a result of some of the matters that arose in the

informal conferences during the recess, the staff was moved to suggest some changes, particularly one at the instance of Tyler Gas Service Company.

Those changes were submitted to Mr. McGowen at the request of the staff, and those changes were approved by Mr.

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McGowen. I say that because Exhibit 79 as now identified is the only exhibit which is not in the form, as I understand it, submitted to Mr. McGowen.

But he did approve those changes as a result of the matters which developed in the conferences that have been going on here. Therefore it follows that Exhibit 77, 78, 79 and 80 were the bases upon which Mr. McGowen felt that the proposed compromise and settlement suggested by the Staff was a reasonable compromise and settlement when the matter was looked at from the four corners, particularly since is was distinctly understood as stated by Mr. DaPra that the settlement proposed and which Mr. McGowen was willing to accept was to be put into effect upon Commission approval without prejudice to and without any party —either staff, United or any party intervenor—being bound by the principles upon which any of the basic material was determined—that is, such matters as cost of service, allocation, the 100.5 which your Honor knows was in some serious dispute, and other similar issues.

Any principle by which the bases of the settlement was reached, it was distinctly understood and agreed that that would be without prejudice to the contentions of all parties and that all parties should be free, in any future proceeding, to assert any contentions and positions that they might be advised respecting those matters, and that

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the free and untrammeled assertion of those matters should not be in any way affected or prejudiced by the settlement.

That being true, and that being the basis upon which United proposed to act, I have only one point of disagreement, and that isn't a disagreement, really, with the Staff. They mark 77, 78 and 79 and 80 for identification. I am not content for them to be identified, Mr. Examiner, because they are the sole basis upon which United agreed to the compromise and settlement that was proposed.

In order that the record so reflect it, I want to go further than a mere identification and as a part of any statement of acceptance of the matter, I want now to move that they be admitted as exhibits and as evidence in this record and become an integral part of this record for that purpose.

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**Excerpts from Transcript of Hearing Held December 6, 1954**
**Carl E. Luttring**

was called as a witnes, having been first duly sworn, was examined and testified as follows:

Direct Examination

• • • • • • • • • •

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By Mr. DaPra:

Q. Mr. Luttring, have you prepared a statement entitled "United Gas Pipe Line Company, Docket G-1142, Rate Base, Investment, and Annual Return, Year 1952"? A. I have.

Mr. DaPra: Mr. Examiner, at this time I ask that there be marked for identification as Exhibit No. 77-A, a document entitled "Federal Power Commission, United Gas Pipe Line Company, Docket G-1142, Rate Base, Investment, and Annual Return, Year 1952."

Presiding Examiner: That may be identified as Exhibit 77-A.

(The document above referred to was marked for identification as Exhibit No. 77-A.)

Mr. DaPra: I may state I have handed copies of this exhibit marked for identification as Exhibit No. 77-A to the parties.

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Presiding Examiner: Very well.

By Mr. DaPra:

Q. The document which you have prepared, Mr. Luttring, is a document that has been marked now for identification now No. 77-A? A. That is right.

Q. Before you begin your explanation of what this exhibit purports to show, Mr. Luttring, is it not a fact that the first page of this Exhibit "United Gas Pipe Line Company, Rate Base, Investment, and Annual Return, Year 1952," is identical to Sheet A of Exhibit 77 which has been hertofore identified and received in this record? A. That is correct.

Q. Mr. Witness, I didn't have an opportunity to inspect the statement of qualifications and training which you have made. I assume that you detailed there the number of years which you have participated in the investigation of United Gas Pipe Line Company? A. Yes, sir. The last paragraph in the qualifications shows the length of time that I was engaged on United Gas Pipe Line Company.

Q. Thank you.

Will you return to that first page of Exhibit No. 77-A, Mr. Luttring, and tell us what is shown thereon? A. Schedule 1 of Exhibit 77-A is identical to Sheet

No. 1 of 77-A offered at a previous hearing, except that we have introduced a column to show the references to deliveries which are explained in this exhibit.

Presiding Examiner: Doesn't Exhibit 77 have the differences also? It is identical, isn't it?

The Witness: Yes, sir. but we do not show in that Sheet No. 1 which was previously offered, any references to those differences. In other words, they were unsupported in the exhibit that was used for conference purposes.

Mr. DaPra: Mr. Examiner, Schedule 1, which is the second sheet of Exhibit 77-A, shows in the extreme right hand column "Differences Over and Under" and shows references to the schedules in which the witness will detail the differences.

Presiding Examiner: Very well.

By Mr. DaPra:

Q. When you referred to Sheet A of Exhibit 77-A, you mean Sheet A of Exhibit 77, do you not, Mr. Witness? I think you misspoke yourself. A. That is probably correct, yes.

Q. Apart from Schedule 1 of Exhibit 77-A, Mr. Luftring, the first sheet that you have in it is exactly identical, is it not, with Sheet A of Exhibit 77 which has heretofore been received in this record? A. That is correct.



Q. And the only difference between Schedule 1 of Exhibit 77-A and the first sheet of the exhibit is the fact that you have shown the schedule references to your explanation of differences? A. That is correct.

Q. I notice on Schedule 1 of Exhibit 77-A that you showed two notes, one which states that "Schedule 1 re-

ferred to herein is shown in application dated June 15, 1953, and filed with the Commission on June 24, 1953."

Do you have reference there to the document, the rate increase application filed by United Gas Pipe Line Company in Docket No. G-2210? A. That is correct.

Mr. DaPra: For the information of the record, Mr. Examiner, this volume has been heretofore identified in this record as Item F by reference.

By Mr. DaPra:

Q. Do you have any other explanation that you care to make with respect to Schedule 1, Mr. Luttring? A. In Schedule 1, the net plant shown in the company's figures under Schedule 1 of $290,925,947 may also be found in the company's application filed under Docket G-2210 on Schedule C, page 1. The working capital shown for the company under Schedule 1 in the amount of $6,858,801 can be found in the application filed under G-2210 in Schedule D under column

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four.

Investment in Account 100.5, Gas Plant Acquisition Adjustments, in the amount of $15,307,372 shown in company schedule 1 may be found in the application under that schedule on Page 2.

Q. What schedule is that?

Presiding Examiner: Schedule 1.

The Witness: Schedule 1.

Presiding Examiner: That is also in G-2210. Right, Mr. Luttring?

The Witness: Of G-2210, yes, sir.

The figure of $15,307,372 in Schedule 1 is arrived at by using the figure of $14,983,069 on line 35 in Schedule 1, and adding thereto the sum of $324,333 representing Contributions-in-Aid-of-Construction which had been credited in that item.

That accounts for all of the items which the company had claimed in its rate base in Docket No. G-2210, and the total investment in the amount of $312,767,817 may be found in Schedule 1 on line 42, column 2 of that schedule.

In this exhibit we have shown the Staff's results and the differences resulting between the staff and the company's claimed investment and have explained hereinafter, in Schedule 4, the causes for these differences.

By Mr. DaPra:

Q. Mr. Witness, the return that you show of $21,111,828



on Sheet 1 of Exhibit 77-A, is taken from line 49, column 2 of Schedule 1, is it not? A. That is correct.

Q. Will you continue with your explanation, sir? A. It is an expansion of the total investment before inclusion of Account 100.5, Gas Plant Acquisition Adjustments, which figure may be found on Sheet 2 of three in the first column in the sum of $285,812,250.

Presiding Examiner: What was that figure, Mr. Luttring?

The Witness: $285,381,250.

By Mr. DaPra:

Q. What is the source of the data which you show on Schedule 2? A. The source of the data shown on all these schedules basically is the books of the company. It has been adjusted to reflect the changes that are necessary to arrive at the rate base investment that we show here in Schedule No. 1.

Q. And that rate base in your judgment is a proper rate base? A. Yes, it is.

Q. And the figure of $285,381,250 which you show on Sheet 2 of Schedule 2 is also reflected in column FPC Staff,

under "Total Rate Base and Investment Prior to Account 100.5" in Schedule 1? A. Yes, it is.

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Q. I had reference to the first sheet of your exhibit, the one which is identical with Sheet A of Exhibit 77. A. Yes, it is.

Q. What do you show on Sheet 3 of Schedule 2, Mr. Luttring? A. May I make a further statement here about Schedule No. 2?

Q. You may. A. We have broken down the investment in Schedule No. 2 to show the investment for all the districts which the company is using for operating purposes. It is broken down into these districts in order to permit the allocation of costs which our engineers must do, and breaking those costs down, it is necessary to deal with districts.

Q. I noticed that you use a Southern Area and a Northern Area and you use certain operating districts in both areas. I take it that you have used the same alligment of areas for the purpose of this exhibit that the company used? A. In so far as this heading on Schedule 2 with respect to Southern Area and Northern Area, that is the same as has been used by the company in its application under Docket G-2?10.

Q. Do you have anything further to add to your explanation of Schedule 2 with reference to Sheet 3 of the exhibit? A. Schedule 2, of course, forms the basis for arriving at

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your amount of return which is shown on Schedule 2, Sheet 3. Again the amount of return is broken down into the operating districts used by the company for cost allocation study that was also prepared by our engineers.

Q. And the resulting figure which you show of $17,484,364 on sheet 3 of Schedule 2 is the same return which you

show under the heading "FPC Staff" on your first sheet of this exhibit? A. That is correct.

Q. When you refer to the engineers of the Commission, you are referring to the personnel which worked under Mr. Stockwell, who is to be a witness in this case? A. Yes, specifically Mr. Stockwell.

Q. What do you show on Schedule 3 of Exhibit 77-A for identification, Mr. Luttring? A. On Schedule 3 is shown the Working Capital by Districts, by Areas and by Functions, that would be allowed if no part would be offset by Federal income taxes. In this case, in the first column, the amount of $5,102,478 is the amount of working capital that would have been allowed if no working capital had been provided from Federal income taxes. This amount is shown under the FPC Staff figures on Schedule No. 1, and immediately below under the caption of "Working Capital Provided from 75 Percent of Federal Income Taxes," the working capital is offset, so that in the Staff's



figures there is no allowance being made for working capital.

Q. Do you have any further explanation to add to Schedule 3? A. No, sir, I don't.

Q. Will you turn now to Schedule 4 of Exhibit 77-A for identification, Mr. Luttring, and tell us what that purports to show? A. Schedule No. 4 shows the investment in the Account 100.5, Gas Plant Acquisition Adjustments, which is allowed for rate purposes, and also shows the period in annual amortization of each acquisition adjustment.

For rate purposes, the sum of $6,024,819 is allowed for investment in the year 1952. This sum is shown under the Staff's figures on Schedule No. 1 as the last item thereon.

Q. I notice you have in your first column from the right, "1952 Annual Provision" and you show a sum of $573,792.29. Will you explain that, sir?

Presiding Examiner: Where does that figure appear?

Mr. DaPra: The third column from the right on Schedule 4 of Exhibit 77-A for identification. The column is headed "1952 Annual Provision," and the sum is $573,792.29.

A. In the heading of that same column we also show in brackers "Schedule No. 5."

In that schedule will be shown the breakdown of the sum of $573,792.29 by the districts and by the functions.

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By Mr. DaPra:

Q. Mr. Luttring, the figure you show of $6,024,819.05 in the most extreme right hand column on Schedule 4, that is the amount, is it not, that is allowed in the rate base for the Account 100.5? A. Yes, sir. I think I just so testified.

Q. I want you to tell us specifically what the figure $573,792.29, which I have talked about, means? A. The sum of $573,792 represents the amortization for the year 1952 of the investment in Account 100.5, "Gas Plant Acquisition Adjustments." The sum is broken down to show the amount of amortization that is applicable to each district and each function in Schedule No. 5.

Q. That amortization is an expense that you would allow. Is that correct? A. That is amortization that we have included in our costs of service for the year 1952.

Q. Does that complete your explanation of Schedule 4, Mr. Luttring? A. Yes, sir.

Q. Will you turn now to Schedule 5 and tell us what that purports to show? A. Schedule No. 5 largely supports Schedule No. 4 and shows the average investment in gas plant acquisition adjustments for the year 1952 by districts and by functions.

and also shows the annual amortization of gas plant acquisition adjustments for the year 1952 by functions.

Q. It relates back to Schedule 4, does it not, the ent results? A. Yes, sir. It supports Schedule No. 4.

Q. I take it that beginning with Schedule 6 you begin an explanation of how you differ in your computation of rate base investment with the computation of the company as shown in its application in Docket No. G-2210? A. That is correct. Schedules No. 6, 7, 8, 9 particularly explain the differences that the Staff has with the figures filed by the company which are shown in Schedule No. 1 of Exhibit No. 77-A.

Q. What does Schedule 6 purport to show, Mr. Luttring? A. Schedule No. 6 purports to explain our reason for disallowing the sum of $4,282,000 from Gross Plant Investment which is a figure that we show in our difference column on Schedule No. 1.

The reason for disallowing this item is because the Presiding Examiner and Commission both ruled that evidence so far presented lacked the quality required to support the issuance of a certificate. In consequence thereof, the matter is held in abeyance for future development of gas reserves.

In so far as I know, the company has made no further



application for a permit to put in that property.

Q. In other words, the company had included in its rate base determination uncertificated facilities? A. That is correct.

Q. And the consistent policy of the Commission has excluded that? A. That is correct.

Q. What does Schedule 7 show, Mr. Luttring? A. Schedule 7 explains our reason for increasing the Depreciation Reserve by the sum of $938,394. This difference is due to

the Company neglecting to include in the reserve an amount which they are claiming as depreciation for cost purposes.

In this case, the company failed to consider the sum of $1,876,788 claimed as depreciation expense in the accrued Depreciation Reserve. Since this sum is provided throughout the months of the year, only one-half of $1,876,788 is reflected in the reserve for depreciation, which is the simple average.

Q. That is shown on Sheet 2 of Schedule 7, is it not? A. Yes, sir.

Q. That also follows the consistent policy of the Commission, does it not? A. I think it follows more than that. It follows good accounting practice.

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Q. Does that account for all the differences which you show on Schedule 7, Mr. Luttring? Or do you feel that the demeanor of that schedule is self-explanatory? A. The explanation I think is quite self-sufficient. On Sheet 1 of Schedule 7 is an adjustment for two reasons. One of them is to remove the depreciation which relates to the construction that was to connect Phillips Block 28 to Kent Bayou Junction, and is a plant that is covered by the explanation in Schedule No. 6.

Q. That is the uncertificated facilities we referred to previously? A. That's right. The second part has to do with the reduction of the depreciation rates in so far as it applies to offshore facilities which has been reduced from 10 percent to 6.64 percent.

The 10 percent rate claimed by the company may be found in Schedule G, page 1 of the application filed under G-2210.

Q. The adjustment with respect to the uncertificated facilities is the amount of $150,382, which you show on Sheet 1 of Schedule 7? A. That is correct.

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Q. And the figure $171,886 also shown on that sheet is the adjustment for the reduction in the depreciation rates? A. In so far as those rates apply to offshore facilities, yes, sir.

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Q. So you have a total adjustment on that page of $322,268? A. That is correct.

Q. Is there any further explanation that you have to offer on Schedule 7? A. No, sir.

Q. What does Schedule 8 purport to show, Mr. Luttring? A. Schedule 8 shows the differences we have in working capital, if working capital had been allowed as an investment. The first item is a difference in Material and Supplies of $1,113,565. The company carries a Material and Supplies account under Account No. 88, General Office. Substantially all of the charges to this account represent purchases of pipe.

The records show that the pipe is intended for use on new construction. Issues from Account No. 88 are charged to Account 100.3, Construction Work in Progress. At December 31, 1952, a substantial amount of the pipe charged to Account 100.3 had been closed to Gas Plant in Service.

I felt that material and supplies of this character are more properly recorded in Construction Work in Progress because the records indicated—at least in this case—that this material was definitely associated with new construction. If it had been put in there, the company would be entitled to set up as a cost, interest during construction.

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The other item on which there is a difference is in the cash working capital in the sum of $642,758. This comes about because of an inclusion by the company in the items used for determining cash working capital, royalties and hydrocarbons extracted, which are paid after collection of revenues from sale of products in the sum of $5,097,077.

Also removed from the expenses used for determining cash working capital are the operating expenses estimated for operation of facilities to connect Phillips Block No. 28 in the sum of $44,987.

The total of those items are $5,142,064. If working capital had been allowed, it would have been on a basis of 12½ percent of those items, which amounts to $642,758. That accounts for the items making up the difference in working capital, if working capital investment is allowed in the rate base.

Presiding Examiner: We will have our usual short morning recess of ten minutes.

(Whereupon, at 11:23 a. m. the hearing was recessed, to reconvene at 11:33 a. m.)

Presiding Examiner: The hearing will please come to order.

Mr. DaPra, are you ready to continue?

By Mr. DaPra:

Q. Turning to Schedule 9 of Exhibit 77-A for



identification, Mr. Luttring, will you state what that schedule shows? A. Schedule No. 9 shows the method used by the company in arriving at its investment in account 100.5, "Gas Plant Acquisition Adjustments" which is shown on Sheet 1 of Schedule 9. Briefly, the company determination is arrived at by using the net investment at the beginning and end of the year 1952, and using a simple average. As shown on Sheet 1 of Schedule 9, the amount claimed by the company for investment in Account 100.5 is $15,307,372.

On Sheet 2 of Schedule 9 is shown the investment for rate purposes for the year 1952 allowed by the Staff. That is arrived at by using the investment at the beginning and end of the year, and adding those sums and taking one-half for the simple average.

The amount allowed by the Staff for investment in Account 100.5 is $6,024,819. The sum allowed by the Staff as shown on Sheet 2 of Schedule 9 is also the sum that is shown on Schedule No. 4 under the average net plant for the year 1952 in the last column on Schedule 4.

Q. Do you have anything further to add to Schedule 9? A. No, sir.

Q. What does Schedule 10 show, Mr. Luttring? A. Schedule 10 merely accounts for the difference



in the annual return which is claimed by the company in the sum of $21,111,828, and the sum allowed by the Staff in the sum of $17,484,364.

The rate of return used by the Staff is 6 percent, while that used by the company was 6¾ percent.

Q. The difference is also accounted for by the fact, is it not, that the company claimed a higher rate base than allowed by the Staff? A. Yes. The difference in the rate base is shown on Schedule 10, so that the difference is due to two things. It is due to a difference in the investment allowed for rate base purposes, and also in the rate of return.

Q. And the total rate base which you show for the company as shown on Sheet 1 of Exhibit 77-A is the figure $291,406,069? Is that a fact? A. That is the amount that is allowed by the Staff.

Mr. DaPra: I offer at this time Exhibit 77-A, Mr. Examiner.

Mr. Dougherty: Wouldn't it be proper to wait for cross-examination?

Presiding Examiner: He may offer it at this time if he wants, and you may make such objections as you want to.

Mr. Dougherty: I merely object to its acceptance in evidence now, until we have had cross-examination under the procedure.

Presiding Examiner: I don't think it is necessary to

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wait until cross-examination. You may attack this document in any way that you wish, of course. The fact that it is received in evidence doesn't exempt it from any attack that Mississippi may wish to make upon it at the proper time.

It will be received as Exhibit 77-A.

(The document above referred to was received in evidence as Exhibit No. 77-A.)

Mr. Dougherty: Might I be permitted to ask just a couple of informative questions now?

Presiding Examiner: Clarifying questions?

Do you have any objection at this time to that?

Mr. DaPra: Not to clarifying questions.

Mr. Dougherty: Mr. Luttring, do you know what rates are involved in that Docket G-2210 that you referred to?

The Witness: I haven't made any study of them.

Mr. Dougherty: Could someone inform me of that? Maybe company counsel could?

Mr. DaPra: G-2210 involves a rate increase application filed by United Gas Pipeline Company with respect to certain town border customers.

Mr. Dougherty: I don't quite understand the figures on Schedule 2 as they are related to your final figures on Schedule 1. Are those a breakdown of the Staff figures, that is, does Schedule 2 constitute a breakdown of the Staff figures as shown in the column on Schedule 1 headed "Per

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FPC Staff"?

The Witness: Yes, sir. Down to the line marked "Total" which is just preceding Working Capital.

Presiding Examiner: What line are you referring to, Sir?

The Witness: We don't have any line numbers on here.

Mr. Dougherty: Could you do this? Maybe you can help me out this way, Mr. Luttring. Your figure of $341,772,658, which is shown as Gross Plant per the Staff on Schedule 1, where do I find that on any of these sheets on Schedule 2 so I can tie it in?

The Witness: On sheet 2 under the first block of figures, the heading of "Adjusted Gross Plant."

Mr. Dougherty: The word "Total" in the first column——

The Witness: Is the total of all investment, systemwide.

Mr. Dougherty: Could you then go likewise down the figures on Schedule 1 and show me where those are found on the sheets of Schedule 2?

The Witness: On Schedule 2, Sheet 2, where the adjusted Depreciation Reserve would be the second block of figures, the sum of $56,067,105.

Mr. Dougherty: I see.

The Witness: The third block of figures on that sheet will represent the adjusted net plant. Your fourth block of figures is "Contribution in Aid of Construction." The last



block of figures is the "Total Adjusted Net Plant."

Mr. Dougherty: Your total adjusted net plant is the $285,381,250?

The Witness: That's correct.

Mr. Dougherty: Continuing on down, where are those found?

The Witness: Continuing on down, the column headed "Per FPC Staff" in Schedule 1, we show an allowance for working capital in the sum of $5,102,478, and in the figure below there we credit the investment in a like sum. So no allowance is made for investment in Working Capital.

Mr. Dougherty: That figure would not be found on Schedule 2 at all?

The Witness: No, sir. That is not found on Schedule 2.

Mr. Dougherty: Now, then, your figures for account 100.5, are they found on Schedule 2 at all?

The Witness: No, sir. They are found only on Schedule No. 9.

Mr. DaPra: Aren't they shown on Schedule 4?

The Witness: That's right. Schedules 4 and 5 and Schedule 9.

Mr. Dougherty: Look on Sheet 3 of Schedule 2. You have a total figure there of about the third block of figures, the total is $291,406,069. That corresponds, does it, to your total rate base investment?

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The Witness: That is correct.

Mr. Dougherty: That has in it these adjustments, though. They must have been given some place, haven't they, Mr. Luttring? The adjustment for 100.5?

The Witness: Yes. It is the second block of figures on Sheet 3 of Schedule 2.

Mr. Dougherty: Were these figures taken as of the end of 1952, or do they represent the average of the beginning and end. I don't see any indication on it.

The Witness: In the application for rate increase filed by the company, there are additions related to Docket G-1447 and 1574 in the approximate amount of $134,000,000. These additions have been reflected in the plant as though the construction were in service for the full year 1952. Additions other than construction under Dockets G-1447 and 1574 in 1952 amount to approximately $3 million, which are spread uniformly throughout the year—in other words, simple average is applicable to these additions.

Because of reflecting the additions under Dockets G-1447 and 1574 for the full year, the sales and expenses for the year 1952 have also been normalized for the full year.

Q. Referring to the figure of the company which you take

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from Schedule 1—that is, the $346,054,658, was that a year-end figure or an averaging figure?

The Witness: That figure is based on the same method

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that I just testified to.

Mr. Dougherty: That is all, Mr. Examiner.

Presiding Examiner: Very well. Are there any further questions of Mr. Luttring?

Mr. DaPra: I ask that there be marked for identification at this time, Mr. Examiner, as Exhibit No. 77-B, a document entitled "Federal Power Commission, United Gas Pipe Line Company, Docket G-1142, Cost of Service by Areas and Systemwide, Including Return at Six Percent, Year 1952."

Presiding Examiner: That may be identified as Exhibit No. 77-B for identification.

(The document above referred to was marked as Exhibit No. 77-B for identification.)

By Mr. DaPra:

Q. Mr. Luttring, have you prepared a statement entitled "Cost of Service By Areas and Systemwide, Including Return at Six Percent, Year 1952"? A. I have.

Q. And this is the document which has been identified here as Exhibit 77-B? A. Yes, sir.

Q. Before you begin your explanation of Exhibit 77-B, Mr. Luttring, it is a fact, is it not, that the Schedule 1 of Exhibit No. 77-B is identical with Sheet B of Exhibit 77, which has been heretofore identified and received in this

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record?

Q. What do you show on Schedule 1 of Exhibit 77-B, Mr. Luttring? A. On Schedule 1 of Exhibit 77-B is shown the cost of service systemwide arrived at by the FPC Staff,

and that arrived at by the Company and the differences between the Staff and the cost of service shown by the company.

In the last column to the right is shown the reference to the schedule which supports the various items in the cost of service statement.

The cost of service statement is broken down to show the account classifications adopted in the code of accounts for the Federal Power Commission. The statements include a return allowance in the case of FPC at the rate of 6 percent per annum, whereas in the company's return allowance, the amount is computed at 6¾ percent per annum.

Q. What does Schedule 2 of Exhibit 77-B show, Mr. Luttring? A. Schedule 2 shows the cost designations which are reflected in statements prepared by the company in their application in Docket G-2210. The costs which we are particularly concerned with in this case are those shown in the columns headed "Southern and Northern Areas."

A breakdown of the Southern and Northern Area costs by operating districts were supplied to Commission engineers for

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use in allocation of costs. These breakdowns are not included in this exhibit.

Presiding Examiner: I am sorry I can't hear what you said last.

The Witness: I said these breakdowns are not included in this exhibit.

By Mr. DaPra:

Q. What is the source of the data which you show on Schedule 2, Mr. Luttring? A. The source of the data is primarily the books of the company as your starting point,

and these have been adjusted to reflect the conditions that were necessary to show the proper cost of service for the year 1952.

Q. Commencing with Schedule 3 of Exhibit 77-B, you then show the various adjustments that you made to the cost of service as prepared by the company, to arrive at your result of $143,628,905.23 shown on Schedule 1? A. That is correct.

Q. Will you go to Schedule 3, Mr. Luttring, and tell us what you show there? A. In Schedule 3 we show an explanation for a difference in the purchased gas in the sum of $3,205,943. We explain that this difference is due principally to the use of estimated prices by the company which subsequently proved in excess of the actual prices paid for anticipated new supplies.

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Purchased gas costs determined by the Staff for the year 1952 are based on actual contract prices in July 1954, which were applied to the volumes estimated to reflect the adjusted or normalized gas requirements for the year 1952.

Q. What was the source of the prices that you used to price the gas, Mr. Luttring? A. We used the actual contracts in pricing all the gas requirements.

Q. Do you have any further explanation to add to Schedule 3? A. None other than perhaps that there is, I think, the sum of about $33,000 of price increases, either in June or July 1954, which are included in the purchased gas costs which are allowed in the cost of service.

This figure of $33,000 was discussed in one of the conferences, but I don't have a copy of it right now.

Q. Of the total purchased gas costs in the sum of $89 million plus, $33,000 represented increases that occurred in June and July of this year? A. Either June or July 1954.

Presiding Examiner: Actually it is a minimal figure in this instance?

The Witness: That is right.

By Mr. DaPra:

Q. What do you show on Schedule 4, Mr. Luttring?

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A. On Schedule No. 4 is shown the adjustment that is necessitated by an increase in wages which the company granted on August 1, 1953. In the cost of service for the full year 1952, we have allowed wages in the sum of $425,-237.

Q. That is for that particular increase? A. Yes, that is for the increase in wages for the full year that is caused by the granting of an increase on August 1, 1953.

Q. Do you have anything further to add to Schedule 4? A. No, sir.

Q. What do you show on Schedule 5, Mr. Luttring? A. Schedule No. 5 explains the decrease in the sum of $322,268 in depreciation expenses which the Staff made, and which is caused by two things.

First, it is depreciation related to disallowance of the investment in connection with proposed facilities to connect Phillips Block No. 28, and second it is a reduction from 10 percent to 6.64 percent in offshore facilities.

I previously testified to this in connection with Schedule 7, Sheet 1 of Exhibit 77-A.

Q. Is there anything further you wish to add to your explanation of Schedule 5? A. No, sir.

Q. Will you turn to Schedule 6 and explain what you show there, Mr. Luttring?

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A. Schedule No. 6 shows the net investment on the books of the company and the annual amortization expenses claimed by the company in its application filed under

Docket G-2210. The amount claimed by the company is the sum of $1,320,292.

In accordance with the Commission's order dated December 16, 1947, amortization is based on a period of 15 years, beginning January 1, 1948, which is the period of amortization used by the company in determining its annual expense.

The Staff disagrees for rate purposes with the remaining investment at December 31, 1952, and also to the period of amortization used by the company. Allowance is included by the Staff in Schedule 1 of Exhibit 77-B in the sum of $573,792, which sum is $746,500 less than that claimed by the company.

The amortization in the sum of $573,972 was previously testified to in Schedules 4 and 5 in Exhibit 77-A.

Q. You are referring now to that figure of $573,792.29? A. Yes, sir.

Q. Do you have anything further to add to your explanation of this schedule, Mr. Luttring? A. No, sir.

Q. Turning now to Schedule 7, will you explain what you show there, sir? A. In Schedule 7 we show the amount of State income



taxes claimed by the company and the sum allowed by the Staff. The amount allowed by the Staff is the sum of $200,000, which is $145,956 less than the amount claimed by the company.

This difference is due to, one, the company claiming a higher investment in Gas Plant Acquisition Adjustments, two, the company claiming annual amortization of gas plant acquisition adjustments, in the sum of $746,700 in excess of that allowed by the staff, three, the company claims a return allowance at the rate of 6¾ percent, four the company claims investment in working capital, five,

the company claimed investment in Phillips Block 28 facilities for which permit has not been granted.

Q. And those differences you have already testified to, have you not? A. That is correct.

Q. Have you anything further to add to your explanation of Schedule 7, Mr. Luttring? A. All of these things have an effect on the net taxable income, and since the tax being allowed is in relation to the income, the higher the income figure, the higher the income tax. So by these changes and reductions which we have made, the Staff figure is reduced to $200,000 as compared with the company's claimed amount of $345,956.

Q. Will you turn now to Schedule 8 and tell us what you show there, Mr. Luttring?

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A. Schedule No. 8 is a computation of the Federal income taxes that is allowed and the cost of service for the year 1952 in the sum of $14,519,513.

Q. Do you have the correct figure there? A. I guess I didn't. In the sum of $6,998,986. These taxes are based on income available for return, assuming a six percent return on investment rate base in the sum of $17,484,364.

The additions and deductions used in this tax computation are similar to those used by the company in arriving at its income taxes in the application filed under Docket G-2210. The tax rate which is used in determining the amount of taxes is shown on Sheet 2 of Schedule 8 and represents the effective rate of the five year average of the percentages that would be shown for the single company statutory rates.

For the year 1952, this five-year average amounted to 92.70 percent, so that the effective rate is 92.70 percent of 52 percent, or 48.204 percent.

Q. Mr. Luttring, it is a fact, then, is it not, that Federal income taxes and the adjustment you show therefor on

Schedule 8 are affected by all the elements which you have previously testified to with respect to Schedule 7, and together would give an effect to a consolidated return? A. Yes, that's right.

Q. Do you have anything else to add to your explanation



of Schedule 8? A. I can't think of anything more.

Q. So that you have in Exhibit 77-B for identification shown the differences in the cost of service obtained by the company and at which you arrived at a systemwide cost of service $143 million-plus shown on Schedule 1? A. That is right.

Mr. DaPra: Mr. Examiner, I offer Exhibit 77-B.

Mr. Dougherty: We would like to object again until we have had cross-examination.

Presiding Examiner: The same ruling. It will be admitted in evidence as Exhibit 77-B.

(The document above referred to was received in evidence as Exhibit No. 77-B.)

Mr. Fletcher: Might I ask one question?

Presiding Examiner: Yes, sir.

Mr. Fletcher: Just one little difference. I think it is shown on its face, but I think perhaps it ought to be reflected on the record.

Mr. Luttring, in Exhibit 77-B, Schedule 1, the last figure in Column 2, headed "Company Schedule J, Total Cost of Service," is $157,642,769, which is the difference between the two lines immediately above it. And in Sheet B of Exhibit 77, which was offered on August 17, 1954, the same figure is 669. That is just an error in subtraction, but I wanted to



get it on the record.

The Witness: That is correct.

Mr. Fletcher: Thank you.

Mr. Dougherty: Mr. Luttring, you mentioned that the costs which are shown on Schedule 2 of 77-B in the two columns Southern Area and Northern Area represented the sum of some figures, I think you said, which were furnished you by the company engineers, that is, the breakdown of those figures?

The Witness: No. Those are strictly accounting figures and were compiled by the accounting Staff. We have these figures that are shown in the columns headed "Southern Area" and "Northern Area" broken down by districts, because in this case it is my understanding that in our Engineering Department in the cost allocation they can not use the figures grouped in this manner.

Therefore, they were furnished to the engineers by districts.

. . . . . .

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**Benjamin P. Stockwell**

was called as a witness, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. DaPra:

Q. Would you please state your name for the record? A. Benjamin P. Stockwell.

Q. What is your profession, Mr. Stockwell? A. Engineering.

Q. By whom are you employed? A. Federal Power Commission.

Q. And in what capacity, sir? A. Supervising Natural Gas Regulatory Engineer.

. . . . . .

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Q. Mr. Stockwell, are you familiar with the properties and operations of United Gas Pipe Line Company?

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A. I am.

Q. Have you prepared, or did you prepare, an allocation of cost of service set out in Exhibit No. 77-A and B which have been testified to heretofore by the witness Luttring? A. Yes, I did. I made an allocation of the cost of service in 77-B.

Q. Is that allocation set forth in detail in the exhibit prepared and distributed by you which has been identified and received in this record as Exhibit 78? A. It is.

Mr. DaPra: Mr. Examiner, I would like to make this statement. I have this afternoon distributed copies of Exhibit 78 which are identical with Exhibit 78 that has already been received in this record, but has two corrections on it which Mr. Stockwell will testify to.

I ask that this exhibit be marked as Exhibit 78.

Presiding Examiner: I think you would mark this one as Exhibit 78-A for identification.

(The document above referred to was marked as Exhibit No. 78-A for identification.)

By Mr. DaPra:

Q. Do you have a copy of Exhibit No. 78-A marked for identification, Mr. Stockwell? A. I do.

Q. Is Exhibit 78-A, Mr. Stockwell, an allocation of the

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overall cost of service of the interconnected system of United. A. Yes, it is. Sheet No. 1, Exhibit 78-A, lines 1 to 11 inclusive shows a summary of allocations for the following four cost areas which comprise the interconnected system of United: Southwest Area, New Orleans 5 and 6,

Central Rate Zone, Jackson District, exclusive of Northwest Mississippi.

Q. Then Exhibit 78-A excludes cost areas as referred to as Wichita Falls and Northwest Mississippi, does it not? A. Yes. These two rate areas are not connected to the balance of the system.

Q. Could you explain, Mr. Stockwell, why you divided the property in this manner in your allocation? A. The four divisions used in this cost allocation represent four separate gas producing areas. The system as operated supports this area division in my opinion.

Q. Then Exhibit 78-A is more than one allocation. If I understand you, then, Exhibit 78-A is actually four allocations which, when completed and summarized on Sheet 1, lines 1 to 11, inclusive, represents the allocation of the cost of service for the entire United system, exclusive of Northwest Mississippi area and the Wichita Falls district? Is that correct? A. That is correct. In addition to this, you will note on the title sheet immediately preceding Sheet No. 1, reference is made to the Northern and Southern areas. The



Northern area consists of the Central Rate zone and Jackson District, exclusive of Northwest Mississippi.

The Southern area consists of the Southwest area and the New Orleans 5 and 6 area.

Q. Turning to Sheet No. 1 of Exhibit 78-A, Mr. Stockwell, will you please explain what this sheet shows? A. This is a comparison of cost of service with revenues on the entire system, exclusive of Northwest Mississippi and Wichita Falls for the year 1952 adjusted, and including Account 100.5. It may be well to explain here that the Northwest Mississippi area consists of a small group of town border gas sales in the extreme northern part of the State of Mississippi.

United purchases all gas sold in this area from Tennessee Gas Transmission Company and all expenses incurred in the area, except a small amount of overhead costs, are direct costs to the area.

The facilities in this area are not physically connected to the main system. It has therefore been eliminated from the system cost allocation, Exhibit No. 78-A, and a separate allocation of its cost of service has been made. Such cost allocation for Northwest Mississippi is not a part of Exhibit No. 78-A.

Q. Will you then proceed with your explanation of Sheet 1, Mr. Stockwell?



A. The information appearing on lines 1 to 11 inclusive and under columns 1 to 9 inclusive reflects total system operations which includes operating districts known as Dallas, Shreveport, Monroe, Jackson, San Antonio, Houston, Beaumont, Southwest Louisiana, New Orleans 6 and New Orleans 5.

The total cost of service shown is $142,933,087, with related revenues of $134,051,924 under old rates in effect prior to January 3, 1953.

Q. What information do lines 12 to 25 on Sheet 1 show, Mr. Stockwell? A. The data on lines 12 to 25 under columns 1 to 9, inclusive, sets out costs, revenues, and related data applying to sales for resale and transportation for others in the Northern Area.

The Northern Area includes Dallas, Shreveport, Monroe, and Jackson districts, exclusive of Northwest Mississippi. The Northern Area shows a total cost of service for sales for resale and transportation for others of $74,412,222, and of related revenue of $70,353,224.

Q. Why have you not shown the Southern Area, Mr. Stockwell? A. Sales in the Southern Area were intrastate sales during this period, except for a few small sales in the northern part of Beaumont District.

Q. What do you show on Sheet 2 of Exhibit 78-A, Mr.

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Stockwell? A. Sheet No. 2 shows a comparison of the cost of service with revenues for the Jackson District, excluding Northwest Mississippi. The data on Sheet 2 in form is similar to Sheet 1. It shows the total cost of service in Jackson District of $43,709,111, and related revenues in the amount of $45,588,676.

On lines 11 to 14, inclusive, appears similar figures for sales for resale.

Q. And what do you show on sheets 3 to 7, inclusive, of Exhibit 78-A? A. These sheets show the basic data and allocation details from which the summary statement on Sheet 2 was developed. I would prefer to explain the classification and development of costs on these sheets after I discuss the other summaries, as the method used in the determination and allocation of cost of service for each district or group of districts was the same.

Presiding Examiner: Mr. Stockwell, I am trying to follow you. You are speaking very rapidly.

The Witness: You say I am going too fast?

Presiding Examiner: It may be a little fast for me, perhaps not for others.

The Witness: All right, I will go slower.

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By Mr. DaPra:

Q. You show another summary statement on Sheet 8 of Exhibit 78-A? A. That is a comparison of the cost of service with revenues for the Central Rate Zone, which includes operations in the Dallas, Shreveport, and Monroe Districts. The data on this sheet is similar to that on Sheets 1 and 2. It shows on line 11, column 6, a total cost of service of $49,176,619, and on line 11, column 5, a total related revenue of $39,989,327.

Sheet No. 8 also shows on lines 12 to 19 similar data related only to sale for resale from the transmission and production systems. On lines 20 to 25 inclusive such data are shown for all sales for resale and gas transported for others.

Q. What do you show on Sheets 9 to 14 inclusive of Exhibit 78-A? A. These sheets contain the details of basic unit costs and allocation details by which I arrive at the total figures appearing on Sheet No. 8 for the Central Rate Zone. As indicated before, I would prefer to explain these detailed classifications and allocation methods following the explanation of the summaries.

Q. What do you show on Sheet 15, then, Mr. Stockwell? A. This shows a comparison of the cost of service with



with revenue for the group consisting of New Orleans 5 and New Orleans 6 operating districts. On line No. 9, column 6, the cost of service for this group is shown as $9,284,693, and the related revenue appearing on the same line in column 5 as $7,734,510.

Q. Will you tell us now, Mr. Stockwell, what you show on pages 16 to 20 inclusive of Exhibit 78-A? A. These sheets contain the basic data and details of allocation supporting the cost of service just referred to on Sheet No. 14.

Q. Turning now to Sheet No. 21, Mr. Stockwell, what does that show? A. This shows a comparison of the cost of service with revenues for the Southwest Area, which includes San Antonio, Houston, Beaumont, and Southwest Louisiana Operating Districts. This shows total cost of service for the Southwest Area of $40,772,664, and related revenues in the amount of $40,739,411.

Q. And what do you show on Sheets 22 to 25, inclusive, of Exhibit No. 28-A, Mr. Stockwell? A. These sheets show the basic data and detailed calculations that were used to

arrive at the allocation of cost of service shown on Sheet No. 21 for the southwest area.

Q. Now that you have explained the summaries of cost allocation for the total system and for each cost group, please

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explain, Mr. Stockwell, the allocation methods and procedures used? A. My allocation of costs to all groups follows the procedure and methods set out in Commission's Opinion No. 225, Docket G-1384, Atlantic Seaboard and others, and other late opinions of the Commission that have approved similar cost allocation methods and procedures.

To explain in more detail, I would like to refer to pages 9 to 14, inclusive, of Exhibit 78-A containing the allocation details for the Central Rate Zone. I prefer to use this section in explaining the details because it contains all the problems and employs all the methods used in the cost allocation of the other groups, as well as containing some special problems that are not found in other groups.

Q. Very well, Mr. Stockwell, you may then turn to Sheet No. 9 of Exhibit 78-A and proceed with your explanation. A. With your permission, I prefer to start with Sheet No. 14 and work back to Sheet No. 9, because that is the procedure used in developing the allocation.

Q. You may proceed in that manner, then. A. The costs on Sheet No. 14, in columns 2, 3, 4, 5 and 6 on lines 1 to 16, inclusive, were furnished by the Staff accountants. Column 6 "Total Production Costs," have been classified between commodity costs and other costs, other costs sometimes called customer costs, do not

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vary in relation to volumes of gas delivered, nor are they fixed costs chargeable to each customer on an equal basis.

Other costs are made up of distribution, operation and

maintenance expense, customer accounting and collecting expense, and related general expense. Such related administrative general expense was distributed between commodity and other on the ratio that each classification of production operating expense, excluding purchased gas, bears to the total production operating expense, excluding purchased gas.

Q. Does that complete what you have to say regarding Sheet 14? A. It does.

Q. Explain the purpose of Sheet No. 13, if you will, Mr. Stockwell? A. Sheet No. 13 contains a condensed classification of transmission operating expense accounts appearing in column 2 of Sheet 14. It also shows a similar breakdown of transmission operating expense less compression costs appearing in column 5 of Sheet 14.

The total transmission operating expense appears on Sheet No. 13, line No. 19, columns 2 and 5 in the sums of $2,253,339, and $1,520,852, respectively.

In column 4, line 4, sheet 13, compressor station fuel is classified as commodity because it is an item of

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cost that varies with the amount of gas pumped. Other compressor station supplies and expenses appearing on line 5, column 2, Sheet 13, is also classified to 100 percent to commodity because it varies with the amount of gas pumped.

Purification supplies and expense appearing on line 7, column 2, Sheet 13, is classified 100 percent to commodity as it is the cost of dehydrating and cleaning gas of impurities. This cost normally varies with the amount of gas handled.

Other operation expense on line 6, column 2 of Sheet 13 consists of labor and supplies and expense in connection with the operation of mains, measuring and regulating stations, preparation of maps and records, dispatching and

similar other expenses. It also includes operating labor of compressor stations, but excludes related supplies and expense which are shown on line 5, Sheet 13.

All these expenses remain comparatively uniform during the year, and are incurred in a rendition of service on the average day as well as on the peak day. They are therefore classified 50 percent to demand and 50 percent to commodity.

The other operation expense appearing on line 6, column 5, Sheet 13, includes all the above-mentioned items except compressor station labor and is classified in the same manner for the same reason.

Operation, supervision and engineering on line 3, columns



2 and 5, Sheet 13, is distributed in the ratio that the total of each classification of operating expense, excluding compressor station fuel, bears to the total operation expense excluding compressor station fuel.

Q. Now that you have covered the allocation procedure applied to operation expense on Sheet 13, will you please explain the procedure classifying maintenance expense, Mr. Stockwell? A. Maintenance of compressor station equipment, line 11, Sheet 13, was classified 100 percent to commodity because maintenance is caused by use or operation, and operation occurs on a basis which varies with the amount of gas pumped.

Other maintenance expense, line 12, Sheet 13, which includes maintenance of measuring and regulating station equipment, mains, dehydration plants, and other transmission systems, structures and equipment, was classified 50 percent to demand and 50 percent to commodity, as such maintenance is equally as necessary to the rendition of service on the average day as it is on the peak day.

It is an expense that occurs at a reasonably uniform

rate during all the year, and variations, if any, are not caused by variations in sales.

Maintenance, supervision and engineering, line 10, sheet 13, was distributed to demand and commodity in the ratio that each classification of other maintenance expense bears

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bears to the total of other maintenance expense.

Q. Will you now explain how you classified miscellaneous expense? A. Rents on line 15, Sheet 13, which includes main pipe line rentals and other miscellaneous rents, and joint expenses credit, line 17, Sheet 13, consisting chiefly of a charge United makes to Texas Eastern for operating certain facilities near Delhi, Louisiana, are classified 50 percent demand and 50 percent to commodity, as such items are not influenced by variation in sales and are necessary for service on the average day as well as on the peak day.

Transmission and compression of gas by others is classified 100 percent to commodity, as such expense generally varies in accordance with the amount of gas so processed.

Q. Please turn to Sheet 12 of Exhibit 78-A and explain the procedure used in classifying transmission costs with and without compression costs, Mr. Stockwell? A. Transmission operating expense on line 1, Sheet 12, is classified as shown on line 19 of Sheet 13. In other words, it is just transferred from Sheet 13 to Sheet 12.

Distribution operating expense, line 2, Sheet 12, includes the operation and maintenance of sales, measuring and regulating equipment, and the maintenance of buildings housing such equipment.

This expense is related directly to customer service

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and classified in this allocation as "Other."

Customer accounting and collection on line 3 of Sheet

12 is likewise a customer service and classified as "other."

"Sales Promotion" on line 4, Sheet 12, would naturally be related to improving load factor, or annual volume of sales, and is therefore classified as a commodity cost.

Administrative and general expense on line No. 5 of Sheet 12 has been distributed in the ratio that each classification of expense, exclusive of compressor station fuel, bears to the total operating expense, exclusive of compressor station fuel.

Other gas revenues credit on line 7, Sheet 12, consists of rents on gas property, revenue from miscellaneous gas sales, and revenue from minor gas transportation for others. This credit has been allocated 50 percent to demand and 50 percent to commodity as it can not be determined that either predominates.

Q. Mr. Stockwell, before continuing, does the other gas revenue that you show on line 12 refer to revenue from miscellaneous gasoline sales? A. You mean on line 7, don't you?

Q. Yes. A. It consists, as I said, of rents on gas property, revenue from miscellaneous gas sales. Maybe I didn't answer your question.

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Q. I think you have.

Will you continue, please? A. Depreciation expense, amortization of gas plant acquisition adjustments, taxes, both federal and other, and return, appearing on lines 8 to 11, inclusive, have been allocated 50 percent to demand and 50 percent to commodity. This is a judgment determination, realizing that the demand and volumetric functions are both very significant, but also realizing that there is no means by which it can be proven that one predominates over the other.

Q. If you have now finished with Sheet 12, Mr. Stockwell, will you please turn to Sheet 11? I note that you

use various types of units in the heading of this sheet, most of which are used elsewhere in this allocation. Would you please explain these units? A. Column 1, Sheet 11, is, of course, self-explanatory. Column 2, metering units, shows the number of such units chargeable to the items mentioned on lines 1, 2, 3, inclusive.

Metering units were determined by giving each monthly dial reading meter one metering unit. Each displacement or orifice meter using a seven-day chart, five metering units, and each orifice meter using daily charts, 30 metering units.

It is believed an equitable distribution of other costs is obtained by allocating such costs to customers or class of



customers on the basis of such metering units.

Annual volumes in column No. 3 and peak day volumes in column No. 4 represent Mef. stated at 14.9 p.s.i.a., 60 degrees Fahrenheit, deviated.

If anybody here happens to have one of the old copies of this exhibit that was distributed at the conference, the heading at the top of columns No. 5 and 6 should be changed. The words "Percent of Total Demand Miles" that is in that old copy should be changed to "Weighted Average." These new copies that have just been distributed, that correction has been made.

Mr. DaPra: Mr. Stockwell, of course, is referring to the old exhibit, No. 78.

Presiding Examiner: By "the old exhibit," you mean Exhibit 78 and 78-A carries the caption "Weighted Average Demand Miles Hauled"?

The Witness: That correction should have been made on Exhibit 78. I have made it on this Exhibit 78-A, but I thought somebody might still have a copy of the old one. I wanted to call their attention to that error.

Presiding Examiner: There were two errors in the first one.

The Witness: I will pick up the other one in just a minute. The weighted average demand-miles hauled in column 5 was obtained by dividing the demand-miles in column 8 by the

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Mcf demand in column 4, and likewise, the weighted average commodity-miles hauled on column 6 was determined by dividing the commodity-miles in column 7 by the Mcf commodity in column 3.

Commodity-miles in column 7, and demand-miles in column 8, were determined from a study made of all sales and transportation in the Central Rate Zone. The miles hauled from source of supply to point of delivery was determined in the case of each sale or transport. This mileage was multiplied by the demand in each case to get the demand-miles, and likewise, by the commodity, to get the commodity-miles.

The figures shown on line No. 3, columns 7 and 8, are the totals of such calculations for sales and transports in the Central Rate Zone.

Figures on line No. 3 in columns 9 to 12, inclusive, are transmission costs less compression costs, which are detailed on sheet no. 12.

By Mr. DaPra:

Q. Now you have explained these units, Mr. Stockwell. Will you please explain in a general way what Sheet 11 contains? A. Sheet No. 11 was made for the purpose of allocating transportation costs to the three large transportation customers, namely, Southern Natural Gas Company, Tennessee Gas Transmission Company, and Texas Eastern Transmission Corporation.

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Since no compression is involved in this transportation operation, the cost of transmission less compression had to be allocated between gas transported for others and transmission sales and transfers out. Here again if you have our old copy of this exhibit, attention is called to the error in the heading above columns 9 to 12, inclusive.

It reads: "Transmission Cost Less Transportation Cost, but should read "Transmission Cost Less Compression Cost."

From line 12, column 6 to 9 inclusive, on Sheet No. 12, the total classified cost of transmission less compression for the Central Rate Zone was transferred to Sheet No. 11, line 3, column 9 to 12, inclusive. By means of the unit cost determined as shown on lines 5, 6 and 7, Sheet 11, the costs on line 3 were allocated to lines 2 and 1. By the same method the cost of transportation on line 2, column 9 to 12, inclusive, was allocated to the three transportation customers on lines 9 to 12, inclusive.

Q. Will you now please explain Sheet No. 10, Mr. Stockwell? A. Sheet No. 10 shows the accumulation of the cost of service for the separate rate zones. On line 2, columns 4 to 7, is the production cost of service transferred from Sheet No. 14, line 16, columns 6 to 8 inclusive.

Also on Sheet No. 10, line 2, columns 8 to 11 inclusive,

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is the transmission cost of service transferred from Sheet 12, line 12, column 2 to 5, inclusive.

On Sheet No. 10, line 2, column 12, is the total cost of service in the Central Rate Zone before receipts from other districts. This is the total of figures on Sheet No. 10, line 2, columns 4 and 8.

Now on Sheet No. 10, line 4, columns 8 to 11, inclusive, is shown the cost of service allocated to transportation

customers, this being the costs shown on Sheet No. 11, line 2, columns 9 to 12, inclusive.

This cost of transportation on Sheet No. 10, line 4, is deducted from the cost of service in line No. 2, leaving available for sale and transfer before receipts the values on line No. 6. To line No. 6 is added the gas and related costs transferred in from other districts shown on Sheet No. 10, line 8. This transfer comes from Sheet 22, line 11, in the Southwest Area cost allocation.

The transferred cost on Sheet 10, line 8, is added to the gas and related costs available before receipts on line 6 to obtain a total cost chargeable to sales in the Central Rate Zone and for transfers out as shown on Sheet No. 10, line 9. Attention is called at this point to an error on Sheet No. 10, line 9, column 2. The figure 391,451,273 should be 391,457,273.

Q. Has that correction been made in Exhibit 78-A?

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A. It has not.

Mr. DaPra: We will make the correction on the official copies, Mr. Examiner.

Presiding Examiner: There is no objection to that?

Mr. Dougherty: Oh, no.

The Witness: That figure incidentally appears in other places in the study, but happened to be written down wrong in this one place.

Presiding Examiner: Exhibit 78-A will show the figure in line 9, column 2, as 391,457,273.

Mr. Fletcher: If it is not too onerous, in order to be free of the transcript, might we suggest that he just be permitted to interline and then the exhibit would so show on its face.

Presiding Examiner: That is what I understood that he did. Is that correct?

Mr. DaPra: Yes.

Presiding Examiner: I asked if there were any objection to that. Apparently there was not.

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By Mr. DaPra:

Q. Will you now please explain Sheet 9, Mr. Stockwell? A. On Sheet No. 9 the cost of service in the Central Rate Zone, exclusive of the cost of transporting gas for others, is allocated between the various groups and classes of customers. On Sheet 9, line 13, are the utilities and related costs for the total sales and transfers out, they having been transferred from Sheet No. 10, line 9.

On Sheet No. 9, line 4, columns 2 to 4 inclusive are the units applicable to sales made from the production system in the Central Rate Zone. By applying the production commodity cost determined on line 15 to the commodity Mcf on line 4, column 3, the production commodity cost on line 4, column 7, is obtained.

By applying the same unit cost to the direct and sales for resale Mcf on lines 2 and 3, column 3, respectively, the costs for each type of production service appearing in column 7 are obtained. The other production costs on lines 2, 3 and 4, column 8, are obtained in like manner by applying the unit cost on line 17 to the metering units on lines 2 to 4, inclusive, in column 2.

By deducting line 4, columns 2 to 8, inclusive, from line 13, columns 2 to 8 inclusive, we obtain line 12, columns 2 to 8, inclusive. The transmission costs on sheet No. 9, line 12, columns 9 to 12, inclusive, are transferred from these same

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columns on line 13; and the total on line 12, column 13, is the sum of the costs shown in columns 5 and 9 on that same line.

All costs shown for transmission sales and transfers out

on Sheet No. 9, lines 6 to 11, inclusive, were obtained by allocation of costs on line 12, using the unit costs appearing on lines 15 to 17, inclusive. Data on Sheet No. 9, lines 18 to 25, inclusive, are merely a breakdown of the sales for resale on the production and transmission systems between pipe line and town border sales.

Q. These data then are carried forward in a summarized form to Sheet No. 8, which you have already explained. Is that correct? A. That is right.

Q. Does this complete your explanation of this exhibit on direct examination? A. It does. However, I would like to repeat that the details supporting the other summary allocations were prepared in a manner similar to that which I have explained regarding Sheets 9 to 14, inclusive, and which relate to the Central Rate Zone.

Q. Mr. Stockwell, on sheet 1 of Exhibit 78-A, in column 4, you show peak day volumes. Can you tell us what peak day that represents? A. That is December 15, 1952.

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Q. If you go back to Sheet 9, sir, of Exhibit 78-A, line 11, column 1 you used the phrase, "Jackson District, Line 381." What does that Line 381 refer to? A. All of United's transmission lines have a number. The figures on this line 11 refer to deliveries made over their Line 381, which is a line from Monroe to Jackson District.

Q. You have a heading, "Gas Transferred to Other Districts." Where you have underneath that, "line so-and-so," that refers to a particular transmission line of United? A. A particular transmission line of United with that particular number.

Mr. DaPra: I have now finished by direct examination of Mr. Stockwell, Mr. Examiner. I now offer Exhibit 78-A.

Mr. Dougherty: We make the same objection; that is, we object to its receipt until after cross-examination, Mr. Examiner.

Presiding Examiner: Exhibit 78-A will be received in evidence at this time.

(The document above mentioned was received in evidence as Exhibit No. 78-A.)

Presiding Examiner: Do you have some clarifying questions of the witness?

Mr. Daugfherty: Yes, I do. You have mentioned that the peak day volumes shown on Sheet 1 of Exhibit 78-A represented the sales on December 15, 1952. May I inquire: Is that for

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the whole system, that is, the coincidental sales for the whole United Gas Pipe Line System on that day?

The Witness: That is correct, Mr. Dougherty, but as I recall now I think there was some normalization in that sale. I am not sure about that, whether there was any normalization in that. There were certain sales we had to normalize for.

Mr. Dougherty: That was the purpose of my inquiry, to find out whether there has been any adjustment made to the actual figures or whether these do represent the actual figures.

The Witness: That I will have to check on. I thought about that as that came up a while ago.

Mr. Dougherty: Then the second inquiry I had on the matter of the peak day was whether or not that day would also be the peak day for sales in the Central Rate Zone as well as for the whole system.

The Witness: It is the same peak day for the whole system and for the Central Rate Zone, too, yes, sir.

Mr. Dougherty: With respect to the annual volume shown in column 3, do those annual volumes represent the actual sales for 1952, or are there some adjustments made?

The Witness: Those are normalized sales, and in connection with some sales there has been quite considerable normalization, yes, sir.

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Mr. Dougherty: When you say normalization, you mean you have adjusted the volumes to some other figure than what was actually sold?

The Witness: An adjustment has been made. I won't say that I made it. I will say I checked it and agreed with it.

Mr. Dougherty: My only inquiry was whether it did represent actual or it represented an adjusted figure.

The Witness: It does not represent actual in all cases. Most of your city gate sales there are actual, but the pipe lines sales have been adjusted.

Mr. Dougherty: Were those adjustments ones that were made initially by United Gas people and agreed to, or did you make them initially?

The Witness: They were made initially by the United Gas Pipe Line Company.

Mr. Dougherty: Would you turn to Sheet 14, please, page 14. I note there is no column which is headed "Demand Costs." By that do I understand that all of the production costs were allocated to "Commodity" and "Other"?

The Witness: All production costs were allocated to the "Commodity" and "Other."

Mr. Dougherty: Do you know whether United Gas Pipe Line Company has any gas purchase contracts under which it pays a demand charge?

The Witness: I think they did not.

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Mr. Dougherty: Would you turn to Sheet 11, please. I think my recollection of what you said with respect to line 1 on Sheet 11 was that that was a combination of the transmission costs of sales made from the transmission system, and also gas that was transferred out of this Central Rate Zone.

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The Witness: That is correct.

Mr. Dougherty: Also I think you said that that was built up from a study you made of every sale. Let me tell you what I am trying to find out. Did you, for the sales made to Mississippi River Fuel Corporation, have a separate computation on the basis of the commodity-miles and the demand-miles for the purchases made by Mississippi, first under their Rate Schedule PL-3 and then secondly, under——

Mr. DaPra: Mr. Examiner, this strikes me as going into cross-examination. The witness has testified that he has made this study with respect to the mileage haul in the Central Rate Zone.

Mr. Dougherty: All I am trying to find out is whether there are any working papers that show those data. I thought if I knew that before cross-examination, it might help to save a little time.

Presiding Examiner: If the witness knows the answer to that question, he may answer.

The Witness: As I have stated in my direct testimony, I determined as best I could the miles hauled from the source

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of supply to the point of delivery on every sale and every transport there, and which would include the sale to Mississippi River Fuel and show both the gas coming from the Northern Area and gas coming in over the 1447 facilities.

Mr. DaPra: This is only sales in the Central Rate Zone. Isn't that correct?

The Witness: I have only got the mileage in the Central Rate Zone, no mileage outside of that.

Mr. Dougherty: Mr. Examiner, I, with you, couldn't quite follow everything the witness said; and I wanted to know whether there are figures available in Mr. Stockwell's working papers from which we could get that spe-

cific data. As I understand it, there are, as you built it up.

What use is made of the metering units, Mr. Stockwell, in your cost allocation?

The Witness: It is used for the purpose of distributing other costs between customers.

Mr. Dougherty: That is all, thank you, Mr. Examiner.

. . . . . .

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**Roy H. Crosby**

was called as a witness, and after having been duly sworn by the Presiding Examiner, was examined and testified as follows:

Direct Examination

By Mr. DaPra:

. . . . . .

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Q. As a part of your duties with the Federal Power Commission, Mr. Crosby, have you been assigned any duties in relationship to the proceedings in Docket No. G-1142, et al? A. I have been assigned as a rate engineer in that case, yes, sir.

Q. And in the course of those duties have you made yourself familiar with the operations of United Gas Pipe Line Company? A. Yes, sir.

Q. Have you familiarized yourself with the testimony

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adduced in this case? A. Yes, sir.

Q. Are you the witness who prepared a statement which has been heretofore identified and received in this record as Exhibit No. 79? A. Yes, sir.

(279)

Q. Will you please refer to Exhibit 79 and state what that exhibit shows, Mr. Crosby?

. . . . . .

By Mr. DaPra:

Q. Do you have the question, Mr. Crosby? A. Yes. Exhibit 79 covers the sales for resale and transportation for the Northern Area, 1952 adjusted, and excludes the Northwest Mississippi Area. It primarily compares the revenues under proposed settlement rates which I term in this exhibit as trial rates, with revenues under rates in effect prior to the increased rate filed by United, and revenues under presently effective rates, including those now in effect under bond or under an undertaking. The sales of pipe line companies are summarized two different ways.

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The first summary is by present rate schedules. The second summary is by customers. Following the data for the pipe line customers comes transportation customers, which is by customers; and then city gate deliveries divided between Central and Jackson Rate Zones, and the latter of which is by rate schedules.

Q. Mr. Crosby, what is the source of the data which you show under the columns headed "Contract or Peak Day Demands and Annual Volumes"? A. From two sources. Partially from the filing by United in Docket Go-2210, which was suspended—Item E and F in this proceeding, I believe; and partially from data supplied by Mr. Stockwell.

. . . . . .

By Mr. DaPra:

Q. Under the column "Revenues Prior to Rate Increase," Mr. Crosby, was that column derived by your applying to

the peak day and annual volumes in the column so listed, in Exhibit

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79 the rates of United which were in effect prior to January 3, 1953? A. It could be arrived at that way, but actually they were secured from Mr. Stockwell's information and from information filed in this matter suspended in Docket G-2210. The revenues I show there of $70,353,222 total, are the same as Mr. Stockwell shows on Sheet 1 of his exhibit, column 5.

Q. What was the source of the data you show under revenues, present rates? A. Those were secured from the same source; although they could be, and were, checked in some instances by applying the unit charges in the manner shown in the annual volume.

Q. The data which you show under the column headed, "Revenues by Trial Rates," how were those computed? A. They were computed as far as the pipe line goes individually from the data shown here. Town borders would have to be secured by individual customers, by means of statements of individual customers.

Q. I note, Mr. Crosby, that in the column headed, "Increase over Present Rates," as far as sales to pipe line customers are concerned, you show an increase only under the Rate Schedule headed PL-3. Can you explain that, sir? A. The trial rates—although they show no designation here—are rolled-in rates; and my trial rate in the

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next exhibit, Exhibit 80, is PL-C and supersedes both PL-3, PL-2 and PL-4. Although PL-3 shows an increase, in total there is a decrease of some $3,534,000 to all pipe line companies.

Q. How much of that net decrease is applicable to the

Central Rate Zone? A. It is the net sum of the first three figures, which is $1,352,525.

Presiding Examiner: Does that figure appear on here?

The Witness: No, sir, it does not.

By Mr. DaPra:

Q. That is a computed figure, is it not? A. It is the total shown there of $3,534,484, minus the figure for the Jackson Rate Zone, which is $2,181,959. It was a difference which I had already computed.

Q. In the preparation of Exhibit 79, Mr. Crosby, did you accept the figures contained in Exhibit No. 78 and 78-A prepared by Mr. Stockwell? A. Yes.

Q. Will you describe briefly, Mr. Crosby, the method used in arriving at the trial rates which you set forth in Exhibit No. 79? A. The task was to design rates for the various classes of service which would recover the total revenue of $74,552,116.



Q. Is that figure shown in Exhibit 79? A. It is shown in Exhibit 79, the column headed "Revenues of Trial Rates," which figure has been agreed to by United and the staff.

Q. Will you continue with your explanation, sir? A. With regard to the problem, for a system like United, which I believe is the largest individual system in the country selling huge volumes of gas to a large number of customers and classes of business, good rate practice I believe dictates simple rates with the unit charges rounded out to the greatest practical extent and recognition of past rate forms and practices.

It may be noted that all my trial rates contain simple figures except that for sales to the pipe line companies of Jackson Rate Zone, which has a demand charge of $1.03 per Mcf per month, a dollar charge was first originally

proposed in the general conferences. Texas Eastern and Southern agreed to absorb the increase in the amount of that three cents, and United agreed to absorb an additional amount in order to reduce the town border rates for the Central Rate Zone somewhat below what I had originally proposed.

Q. In establishing your rates, Mr. Crosby, did you give any recognition to historical practice of United? A. I am sorry, I did not hear you.

Q. I say in arriving at your trial rates, did you



give any recognition to the historical rate practice of United? A. Yes, I did.

Q. What did you do in that regard? A. I patterned my trial rates on United's past and present rates. In my opinion it is not good rate practice, particularly on a system as large and diversified as United's, to make any drastic changes in rate form unless the existing forms do not themselves conform to good rate practice and are unacceptable.

It may be observed that, except for the transportation and rates for the one field sale, my trial rates are wholly patterned after United's present rates. Because United's rates prior to its initial tariff filing, which was suspended in part in Docket G-2019, were, to a great extent special and non-uniform contractual rates, influenced my rate design very little.

In the case of transportation rates, United expressed a desire to return to the flat rate form that it had prior to the tariff filing. Under the circumstances of this case, including the fact that such flat rates were previously in effect, I reverted back to that form.

Q. Mr. Crosby, in arriving at trial rates for the town border sales, did you also give similar recognition to the

historical practice of United? A. To the extent of their existing rates. The prior

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rates in effect were of the type that I mentioned to a greater extent, contractual rates. They had straight volumetric rates for domestic use in some instances, but it varied and the industrial rates were percentage rates; and I had no desire to follow that practice.

Q. I notice that in your pipe line rates, Mr. Crosby, the rate schedule which is designated in Exhibit No. 80 as PL-C, consisting of a demand charge of 75 cents a month and a commodity charge of 10 cents, is lower than the pipe line rate for the Jackson Rate Zone. What consideration did you give in arriving at that rate zone, with particular regard to the Mississippi River Fuel Corporation? A. If I understand your question correctly, there is a difference in level between that for Jackson and that for Central.

Q. That is right. A. It was predicated on costs and certain other practical considerations.

* * * * * * * * * *

By Mr. DaPra:

Q. I notice that in United's present rate pattern,

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they have three PL schedules designated PL Schedules 2, 3 and 4. I notice that you have arrived at one schedule for those three schedules called Rate Schedule PL-C. Could you tell us what influenced your decision in that regard, Mr. Crosby? A. In each rate zone United sells only one service from its transmission system at a uniform cost. Sound rate making dictates that only one rate can apply to that service. Otherwise discrimination will result. United Rate Schedules PL-1 and 2 and PL-4 in part are incremental rates. The Commission recognized in its

Opinion No. 206, which I believe is at 10 FPC 5; and Opinion 232, and anticipated at that time that they would be considered along with United's other rates in Docket No. G-1142, that uniform rates would be established.

The Commission, I think, made this very clear in Opinion No. 232, page 62 of the mimeographed copy authorizing rate PL-4, wherein it stated:

> "The establishment of two rates for the same service to the same customer at the same point of delivery is poor rate practice."

On page 63 of that same opinion they stated:

> "In this connection, however, we believe we must take cognizance of our pending investigation of United's rates. In the event that our general investigation has been completed prior to the commencement of deliveries hereunder, the rates

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> for the service herein authorized shall be the same as those established by such investigation for similar service in the area."

In Opinion No. 206, page 16 also calls attention to the investigation then in progress, which is G-1142, and states such rates proposed by United in Docket G-1447 be considered along with United's other rates in the investigation.

Uniform pipe line rates, therefore, in my opinion conform to my understanding of the Commission's policy; and I believe them to be fair, equitable and non-discriminatory.

Q. Mr. Crosby, does this complete your explanation of Exhibit No. 79? A. Yes, sir.

Q. Did you also, Mr. Crosby, prepare the exhibit which has heretofore been identified and received in this record

as Exhibit No. 80? A. I prepared it in conjunction with United.

Q. What is that exhibit, Mr. Crosby? A. Exhibit 80 is the formalizing, putting in tariff form, of my trial rates; whereas on Exhibit 79 we have just the bare statement of the unit charges in a very skeletonized manner, Exhibit 80 is the formalizing of those—anticipating to be filed in tariff form.

Q. Other than formalizing the trial rates in tariff form, Mr. Crosby, does Exhibit 80 make any other substantial



changes which are not presently incorporated in the tariff of United Gas Pipe Line Company? A. There are some, yes. If I may go through them, one of the changes which does not appear in Exhibit 80 yet, but will at the time the map is supplied, will include in the Central Rate Zone—as Mr. Stockwell expressed it—the northern part of the Beaumont Area, I believe. So that, whereas in the present rates we have separate rates for the Beaumont Area, they will be incorporated and published in the Central Rate Zone areas.

Q. What other changes do you show there, Mr. Crosby? A. The DG schedules, which are the rate schedules for town border—large town border deliveries—now applicable to customers having demands in excess of 3,000 Mcf a day. The trial rate proposed to make that rate schedule available to anybody under 3,000 provided they will pay on the basis of 3,000.

That is a change both in the availability and in the minimum bill. There has been a change in the minimum bill in those approximately in proportion to the change in the first block of the rate. The tariff is now on file and contains a G-NW and an IND-NW, which is supposed to be replaced here—although it does not appear on this exhibit—by a G-NW and a DG-NW.

In the G rate schedules, which is for the small volume

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sales to town border, there is a section allowing customers to elect the DG rates, which are the large volumes rates. He may revert back to the G rate schedule only after twelve months.

In the IND schedules, there is a substitute fuel credit now contained in the IND-J rate which applies to the Jackson Rate Zone. That has been added to the IND schedule for the Central Rate Zone.

Q. Does that complete your explanation, Mr. Crosby? A. No, sir. PL-C, which is the trial rate, the proposed rate, for sales to pipe line companies in the Central Rate Zone; and PL-J, which is that for the Jackson Rate Zone, are patterned to a great extent after PL-1 and PL-2, except for the measurement base, which is now uniform at 14.9.

In the previous PL-1, 2 and 4, it was 14.4 pounds plus 10 ounces.

. . . . . .

By Mr. DaPra:

Q. I asked for substantial changes in the tariff from that presently filed. A. The only other substantial change that I recall is in regard to the PLE-1 rate for emergency service, which reflects the level of PL-1 and 2 at about 100 percent load factor.

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We now have two emergency rates—one, PLE-C, for the Central Rate Zone; and one, PLE-J, for the Jackson Rate Zone—which reflect respectively about a 100 percent load factor for each of the pipe line rates for those zones.

I believe that is the bulk of the substantial changes.

Mr. DaPra: That is all I have of Mr. Crosby, Mr. Examiner.

. . . . . .

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D. D. Dillingham, Jr.

was called as a witness, and after having been duly sworn by the Presiding Examiner, was examined and testified as follows:

Direct Examination

By Mr. DaPra:

Q. Will you state your name and present position? A. D. D. Dillingham, Jr., General Superintendent of Operations, United Gas Pipe Line Company.

Q. Will you state your training and experience, Mr. Dillingham? A. I have three years of college education in engineering. I have been connected with United 26 years principally in the Operating Department. However I have had some experience in the Engineering and Construction Departments.

Q. You say you worked for United 26 years? A. Yes.

Q. In connection with your present duties and your

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experience with the company during the past 26 years, Mr. Dillingham, are you familiar with the system operations and deliveries of natural gas of Mississippi River Fuel Corporation? A. Yes, sir, I am.

Q. Are the deliveries that are made by United Gas Pipe Line Company, Mr. Dillingham, to Mississippi River Fuel Corporation deliveries out of system gas, or are they deliveries made with regard for contract and any other obligation United Gas Pipe Line Company may have with Mississippi River Fuel Corporation which would recognize specifically deliveries under the Sterlington-Carthage and the Corpus Christi lines?

Mr. Dougherty: I object to that question, Mr. Examiner.

I think it is too involved. I think whatever facts this witness can testify to he should, but it is calling for a lot of conclusions on contracts as well as other things.

Presiding Examiner: It seems to me it is an awfully long question. Is it possible for you to break it down?

Mr. Dougherty: I have no objection to him telling where the gas moves.

Presiding Examiner: The point you were making, as I understood it, is that the question is too long as to be somewhat ambiguous to its meaning.

Mr. Dougherty: That is a lot of it, but in addition, it calls for a lot of contract conclusions.

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By Mr. DaPra:

Q. On a day-to-day basis, Mr. Dillingham, can you state how deliveries are made by United Gas Pipe Line Company to Mississippi River Fuel Corporation? A. Yes, sir, I can. We have two pipe lines that extend from the area of Sterlington, Louisiana, to a delivery station near Perryville, Louisiana, to Mississippi River Fuel Corporation. Those pipe lines are operated as a loop from their beginning at Sterlington. At the delivery point to Mississippi River Fuel we have a meter station consisting of seven meter tubes.

Two of those meter tubes are connected directly to one line from Sterlington, which is a 26-inch line. Three are connected directly to a 20-inch line originating at Sterlington, and two of the tubes may be switched to either of the lines.

However, the two headers of the stations as I have described are also tied together, and may be operated as a single station.

Q. Does that complete your answer as to the facilities? A. In addition to that the two lines that I have described

originating at Sterlington and going to Mississippi Riv
Fuel, are in turn tied into all of the sources of supply in
our Monroe District.

Q. Do those lines pick up gas from fields other than t
Carthage field?

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A. Yes, sir, they do.

Q. And in order to meet your deliveries to Mississi
River Fuel Corporation, do you depend upon these faci
ties and those reserves? A. Mr. DaPra, I would rather s
that we depend on all of those sources of supply to ser
all of our customers in that area, plus demands on th
area for our Jackson district.

Q. In other words, you depend upon all your gas supp
and all your gas facilities to meet all your needs? A. Th
is correct.

Q. Including the needs of Mississippi River Fuel C
poration. A. That is correct, yes, sir.

Mr. DaPra: That is all we have of this witness, M
Examiner.

Mr. Dougherty: No questions.

. . . . . .

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Excerpts from Transcript of Hearing Held December 9, 19[illegible]:

By Mr. Fletcher:

With respect to Exhibits 77 to 80, I offered those
August 17 at the hearing we had here before you. In ord
that this matter may be set forth in full for the purpo
of the request I have to move you for, I would like
adopt by reference beginning with the transcript at pa
3056, where I begin to discuss the matter, down throu
the middle of page 3059, in which I make it plain, subj
to the reservations on the part of United there stated, a
particularly to which I

desire to refer, that United considers that it has accepted the figures of Exhibits 77 to 80, both inclusive, that those exhibits then became the sole basis for the settlement in the proceeding from that point forward.

The Examiner will recall, as the excerpt of the document shows, that while the Staff at that stage had merely identified those exhibits, I was very insistent in so far as I was able that, being the foundation and the sole basis of United's action figure-wise on those exhibits, that I wanted them in the record and I so offered them.

My offer still stands, and while those exhibits have here been reoffered and reintroduced, they are identical save only with one or two minor corrections. So I do not assume that it is necessary for me again on the part of United either to state that I do adopt those exhibits, or that I offer them, of course subject to the same exceptions and reservations upon which the settlement was made.

I do not adopt in that respect Exhibit 81. I have no objection to it, but I do not adopt it because I conceive that to be in conflict with one of the principles which Mr. McGowan was so careful to reserve, and it is not essential to this matter.

. . . . . .



Presiding Examiner: Mr. Fletcher, may I ask you another question. Originally you will recall Exhibit 77 was introduced and it consisted of two pages. On Monday, in addition to Exhibit 77, there were introduced into the record Exhibit 77-A, which contained the first page of what was originally Exhibit 77, together with other figures explanatory of that page, and Exhibit 77-B, which consisted of the second page of what had originally been Exhibit 77, together with the figures explaining how the

dollars arrived at on the first page of Exhibit 77 were reached. And in addition, there were, I think, a couple of minor corrections of Exhibit 78-A.

When those exhibits were offered in evidence on Monday,

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I noticed United did not object to their admission in evidence.

Mr. Fletcher: No, sir.

Presiding Examiner: What is the position of United with regard to Exhibits 77 through 80, inclusive, and the exhibits to which I have just referred? Does United consider now, in the light of your statement, that it adopts those exhibits as a part of its case, with the exceptions and reservations to which you have referred?

Mr. Fletcher: Yes, your Honor. And with respect to the additional figures in the exhibits, as I conceived them, your Honor, they were merely, as you stated, explanatory or in the nature of what I would call working papers which demonstrate how the conclusory effects of the exhibits which we originally had were reached.

For that reason, it seemed to me that they were integrally a part of the figures. I did not say anything at the time because I considered that my offer of those exhibits originally was sufficient to embrace the exhibits as presented here the other day. If it be not, then I should like the record to reflect that I join in the offer of Exhibits 77 to 80, as offered in the proceeding on Monday, subject, of course, to the reservations which have already been stated.

. . . . . .

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**Carl E. Luttring**

resumed the stand and testified further as follows:

Cross-Examination (Resumed)

By Mr. Dougherty:

Q. Mr. Luttring, I want to ask some questions now about the purchased gas cost which figure is shown in Exhibit 77 B, Schedule 1, under "FPC Staff" which you also show on Schedule 2. Will you at this time, keeping that figure before you, also turn to Item E, Schedule F, page 2?

I note that on page 2, Schedule F, Item E, the actual purchased gas cost per books as shown in column 2, line 1, for the year 1952, was $64,873,699, and that there was an adjustment made by the company to that figure for the purpose of the rate provision amounting to $27,550,499, which is shown in column 3, bringing the company's total adjusted gas purchased cost to $92,424,198, which is the amount that is shown in Exhibit 77 B, Schedule 1, under the column headed "Company."

First would you tell me how you arrived at your adjust-



ment by which you reduced the company's adjusted figure by the amount of $3,205,943 to the resulting figure of $89,218,255? A. The purchased gas cost in the sum of $89,218,255, shown on Schedule 1 of Exhibit 77-B, was determined by pricing the gas requirements to accommodate the sales in this study as of July 1954 at the actual contract prices.

The study made was made for the year 1953 gas requirements, which were approximately 16 million Mcf greater than the volume required for the gas requirements in the year 1952. The 1953 gas requirements were reduced by the sum of approximately $16 million Mcf, which in effect worked back to the gas requirements of a billion 50 million Mcf of gas requirements for the year 1952.

The gas requirements for 1952 were priced at December 31, 1952 costs. That is, the contract prices.

Mr. DaPra: Did you misspeak yourself on the date?

The Witness: I don't think so.

Presiding Examiner: So that there will be no question about it, the reporter will read the last part of the answer.

The Witness: Wait until I get through.

Presiding Examiner: Go ahead.

Mr. DaPra: I thought you said '43. Excuse me.

Presiding Examiner: '52. I am sorry, Mr. Luttring.

The Witness: If the 1952 gas requirements had been



priced at July 1954 contract prices, the cost would have been approximately $148,000.

By Mr. Dougherty:

Q. Mr. Luttring, in applying the prices which you did apply to the volumes used to arrive at your estimated gas cost in Exhibit 77-B, what adjustments, then, did you make to the company's estimates of those gas requirements, and can you tell us how you went about it? A. I thought I just described that.

Q. You said you reduced it, I think, by 16 billion Mcf. Do you think we can do it better with——. A. Do you have that sheet that I gave you?

Q. Mr. Luttring, you furnished some of your working papers that would have the data containing the adjustments to volumes and gas cost which you made? A. Yes, I did.

Q. I am handing you here a photostatic copy of some sheets. The first one is entitled "1952 Adjusted to 12-31-53 Corrected Contracts" and consists of a first sheet which seems to be a summary sheet, and is followed by one that is called page 1 of 2, page 2 of 2, and then a subsequent sheet which has no title on it, but has some statistics that are related to it, that consisting of four pages altogether.

Presiding Examiner: You want to identify that in the

record, Mr. Dougherty?

Mr. Dougherty: I do, yes, sir.

Presiding Examiner: That will be identified as Exhibit 82 for identification.

(The document above referred to was marked for identification as Exhibit No. 82)

By Mr. Dougherty:

Q. Mr. Luttring, do you have before you this document which has been marked now for identification as Exhibit 82? A. I do.

Q. Can you refer to that and describe, then, the adjustments that were made to the 1952 volumes and finally come out to the volumes which you used for the purpose of computing the cost of purchased gas which you show in 77-B. A. In the first four columns there is a little numeral with a circle, and in those circles there are Nos. 1, 2, 3 and 4.

In this block of figures is shown the gas requirements that will be required for the year 1953. That volume in column No. 1 is 1,109,087,000 Mcf.

Q. Could I ask you there what the source of that total and the figures making it up is? A. The source of that figure comes from a record



was furnished by the Gas Supply Department of the company and a copy of which was furnished to one of your representatives.

Q. I don't intend to put this in the record, Mr. Luttring, but just so that we will know that this is the volume, here is a book of photostated sheets which has on the front cover "United Gas Pipe Line Company, 1953 Gas Pur-

chases, Adjusted, Working Papers in Connection with the Cost of Gas from Each Individual Field."

Is that the volume that you turned over? A. That is the volume, yes, sir.

Q. And that consists of a series of pages that are headed 1953, Gas Purchase Budget? A. That is correct.

Q. That then was prepared by whom? By the company or by the Staff. A. It was prepared by the company.

Q. They furnished you that volume? A. They furnished the volume to us for such checking and verification as we desired to make.

Q. Having received that volume, the total figures of which are represented in column 1 on the first sheet of Exhibit 82, what was the next step you took in making your adjustments? A. The next step there is the pricing of that



volume of gas in accordance with the gas supply record which the company furnished in accordance with the contract prices in effect in July 1954. The result of that is shown in this column No. 4 in the amount of $94,462,949.

Q. Mr. Luttring, I note that that is a higher figure than what is shown as the company figure in Exhibit 77-B, Schedule 1 for purchased gas. A. Yes, sir. Bear in mind that those prices were for the gas requirements for the year 1953. To get back to the gas requirements for the year 1952, the volumes in money were cut back in order to arrive at the volumes required for the year 1952, which you will find in the columns No. 10, 11, 12, and 13. In column No. 10 is the volume required for 1952 of 1,047,131,000 Mcf.

This figure excludes Wichita Falls. When Wichita Falls is added

Q. Is that the volume which you desire, Mr. Luttring?

A. Yes. But let's let it go. It is approximately 3 million Mcf for Wichita Falls.

Presiding Examiner: That is your recollection?

The Witness: That's right. The money related to Wichita Falls gas purchases is $218,020. And when that amount is added to the $89,235,000 shown in column 13, you will get the sum of $89,218,255 shown in Schedule 1 in the column marked FPC Staff.

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By Mr. Dougherty:

Q. Are you through with that answer, Mr. Luttring? A. Yes, sir.

Q. Now, you have not yet referred to columns 6, 7, 8, and 9 on this first sheet of Exhibit 82. Will you tell us what those figures are and what other figures they relate to on this sheet? A. Columns 6, 7, 8, and 9 are the reduction in volumes to the volumes shown in Column No. 1 that was necessary to cut back to the gas requirements for the year 1952?

Q. I ask this: In pricing the volume of gas shown in column 6, did you use the same prices as you did in pricing the volumes shown in column 1? A. To a very large extent, yes. There was only a minor difference, as I understand it, in the pricing at December 31, 1953, and July 31, 1954.

Q. The heading over these columns 1, 2, 3 and 4 says "1953 Adjusted to 7-31-54."

Do I understand from that correctly that the cost figures shown in column 4 are based upon July 1, 1954 prices, or are they based on some other prices. A. No, sir, they are based on July 31, 1954 prices.

Q. July 31, 1954? A. Yes, sir, as the heading indicates.

Q. What I am not yet clear about is this: What

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revisions did you make in the pricing used to arrive at

the total in column 4 for the purposes of arriving at the dollar figures in column 9.

Mr. DaPra: I submit, Mr. Examiner, he has answered that question.

Mr. Dougherty: If the answer is none, that is all right. That is what I am trying to find out.

Presiding Examiner: I will let him answer.

Mr. Dougherty: I thought he said in some respects.

Mr. DaPra: I thought he said in all respects except in a few minor instances he had used July 31, 1954 prices.

A. It is my understanding that there was only a $148,000 difference. If the July 1952 costs were priced in July 1954 instead of December 1953, there would have been a difference of $148,000.

By Mr. Dougherty:

Q. All I am trying to find out, Mr. Luttring, is what prices were used against the volumes shown in column 6. I just don't understand that, whether they were the same as used for pricing column 1 volumes. A. I can't answer you at this time.

Q. You can keep that in mind and maybe we can get it later. Now then, in order to get at the volume figures in column 10, did you subtract from the figures in column 1 the corresponding figures in column 6?



A. Actually this work wasn't done by me. The calculation that you are talking about works out that way.

Mr. Dougherty: If it is preferable to have someone else be questioned about this question of the gas cost adjustments, Mr. Examiner, it is all right with me. I am not trying to inquire of Mr. Luttring things he doesn't know about. I am just trying to get the data in the record.

Presiding Examiner: I understand that. Mr. Luttring

testified on direct and he is on cross-examination, and of course you have a right to ask him such questions as you think are material.

If he doesn't know, he will say so. If necessary for your purposes you may call such witnesses as you wish.

By Mr. Dougherty:

Q. Mr. Luttring, from your examination of these figures, it does appear that the volume figures in column 10 represent the adjusted figures after the volumes in column 7 are subtracted from the volumes in column 1? A. Yes, sir, they do.

Q. Are there any other of these other sheets here that explain the adjustments which have been made and which are reflected in column 6 for the various districts both in the Southern Area and the Northern Area? A. If they do, I am not familiar with them.

Mr. DaPra: Will you read that last answer back?



(Answer read)

By Mr. Dougherty:

Q. Do you know who prepared these working papers, Mr. Luttring? A. These particular working papers were prepared by the company. They were tendered to our Staff for examination in the working of checking the contract prices and all other matters relating thereto was done by another Staff member.

Q. Did you yourself check into the reduction in volumes that are shown in column 6? A. No, sir. I didn't do it.

Presiding Examiner: Someone under your supervision did that? Is that right?

The Witness: That is correct.

. . . . . .

Presiding Examiner: As I understood Mr. Da Pra's statement, the reference to association means Union.

Mr. Dougherty: True, that is right.

Presiding Examiner: If that is so, then I should think



the figures under the heading "Associated," wherever that would refer to, should give you the figures that you want.

Mr. Dougherty: They will give us the figures as related to this column 4 on Exhibit 82, which is $94 million; but they will not give us the figures that are related to column 13 on Exhibit 82, which is the staff adjusted figures.

Presiding Examiner: Where would those figures be found, Mr. Lattring?

The Witness: The figures are found, of course, on pages 1, 2 and 3 accompanying Exhibit 82. But they are not broken down as between associated company and non-associated companies. So far as I know, that breakdown is not in our papers.

By Mr. Dougherty:

Q. That may be the answer, that you did not make any breakdown. That is, for example, take the reduction in costs that are shown starting on the second sheet of Exhibit 82. Is there no document that will identify those reductions with Union Producing, that is, no working papers? A. No, sir. To my knowledge there isn't anything in our working papers which will classify that as between associated and non-associated purchases.

. . . . . .

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**Excerpts From Transcript of Hearings Held December 10, 1954**

Presiding Examiner: The hearing will please come to order.

The hearing in the matter of United Gas Pipe Line Company, Docket No. G-1142, et al., will please come to order.

Mr. Da Pra: Mr. Examiner, I have a preliminary statement to make.

Yesterday, Mr. Luttring, who was the witness on Exhibit 77-A and 77-B, was questioned at some lengths by Mr. Dougherty with respect to the figure of $89,218,255, which is the Staff allowance for purchased gas for the test period 1952, adjusted, as shown on Schedule 1 of Exhibit 77-B.

Mr. Dougherty's questions not only went to the prices used to arrive at that allowance for purchased gas, but also as to the volumes used.

After the hearing yesterday, I had a consultation with Mr. Luttring and he advised me that as far as the pricing of the volumes by which the purchased gas allowance of $89 million-plus was arrived at, that he did not do that pricing by himself actually. It was done under his direction and supervision by Mr. Robert W. Epperson, a member of the Commission's staff.

During the course of his cross-examination of Mr. Luttring with regard to purchased gas, Mr. Dougherty on behalf of Mississippi River Fuel offered for identification Exhibits

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82 through 88, inclusive.

Presiding Examiner: They were only offered for identification.

Mr. Da Pra: That is what I understood, that they were offered for identification.

In view of the fact that the actual pricing of the volumes

of gas from which the purchased gas allowance was arrived at was done by Mr. Epperson, we contacted Mr. Epperson in Chicago. He is here in Washington today.

At this time I wish to say I am prepared to tender Mr. Epperson with respect to the pricing of the gas by which the purchased gas allowance shown on Schedule 1 of Exhibit 77-B is arrived at.

Yesterday Mr. Dougherty attempted to elicit answers from Witness Luttring with respect to volumes. I wish to state now that as far as the volumes are concerned, they are the responsibility of Mr. B. P. Stockwell, a member of the Commission's Staff who has already testified in this proceeding and will testify later on.

So when the opportunity comes that Mr. Dougherty or any other party has questions with respect to volumes, they are the responsibility of Witness Stockwell, and we will produce Witness Stockwell at the proper time on the volumes which were used and by which Mr. Epperson, under the direct supervision of Mr. Luttring, had arrived at the

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purchased gas cost.

. . . . . .

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Carl E. Luttring

resumed the stand and testified further as follows:

. . . . . .

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Redirect Examination

By Mr. Da Pra:

. . . . . .

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Q. Mr. Luttring, on several occasions in response to questions by Mr. Dougherty you have stated that you have

accepted figures by United. Could you tell us what you mean by accepted? A. Whenever I use the term "accepted," I mean that I have accepted the figures after checking and verification.

Q. When you used the term that you have allowed so much in expense, what do you mean by that? A. It means that it is an amount that I arrived at through accounting computations or checking, and after determining what I felt was the proper amount that has been allowed as, for instance, a cost of service.

Q. It is an amount to be properly included in the cost of service? A. Yes. All amounts that I have included in there are in my opinion proper amounts.

Mr. Da Pra: I believe that is all I have of Mr. Luttring.

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Presiding Examiner: Are there any further questions to be put to this witness?

Mr. Dougherty: None.

Presiding Examiner: The witness may be excused.

(Witness excused.)

Mr. Dougherty: I would like at this time to offer as part of his cross-examination Exhibits 82 through 90, inclusive.

Presiding Examiner: All exhibits between 82 and 90, inclusive, are now offered in evidence?

Mr. Dougherty: Yes, sir.

Presiding Examiner: Is there any objection? I hear no objection. Those exhibits will now be received in evidence.

(The documents above referred to were received in evidence as Exhibits 82 through 90, inclusive.)

Mr. Dougherty: Is Mr. Epperson here? We might as well get that over with.

Mr. Da Pra: Mr. Epperson just arrived here in town. I was wondering whether it would suit your convenience

to have Mr. Stockwell and then we can make Mr. Epperson available immediately after that.

Whereupon,

**Benjamin P. Stockwell**

was recalled as a witness, having been previously sworn, was further examined and testified as follows:

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Mr. Da Pra: Mr. Examiner, before Mr. Dougherty begins, I would like to ask Mr. Stockwell a few questions with respect to volumes.

Presiding Examiner: All right.

Direct Examination (Resumed)

By Mr. De Pra:

Q. Mr. Stockwall, do you accept responsibility for the volumes which were used in the Staff's allowance in this proceeding? A. I do.

Q. And with particular reference to gas purchased volumes, Mr. Stockwell, could you tell us how you determined the gas purchase volumes for the year 1952, adjusted. A. The 1952 purchase volumes used in the 1952 cost of service are those shown in column 10 of Exhibit 82. Those purchase volumes were furnished to the Staff by United. They were compared with 1952 actual, 1953 actual, and 1953 normalized, as well as a number of comparisons that were made on individual fields.

After that study of these volumes——

Q. Mr. Stockwell, let me ask you a question there. With reference to Exhibit 82, then, the volume under column 10 of $1,047,130 M²cf represents the actual deviated and normalized volumes used for the year 1952, adjusted? A. That is M²cf.

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Q. What does the figure 1,109,087 M cf in column 1 represent? A. That is the 1953 normalized volumes as set up by the company.

Q. Is that figure also based on actual 1953 and deviated and normalized? A. It is deviated and normalized. The actual 1953 undeviated and unnormalized was 1,037,995 Mcf.

Q. So that the figure of 61,956 Mmcf shown in column 6 of Exhibit 82 is merely the difference between your 1952 adjusted volumes and what is shown as 1953 adjusted. A. That happens to be the difference between the two normalized deviated volumes.

Q. On pages 1, 2, and 3 of Exhibit 82, Mr. Stockwell, is shown the volumes under a heading called "Volume Reduction," totalling the 61,956. I ask you what check, if any, did you make of those volumes? You will note, Mr. Stockwell, that they show reductions in volumes from particular fields. For instance, like on page 1 of 2 it shows for the North Port Neches field in Beaumont a reduction of 2,878 Mmcf. Did you make a check of each particular field? A. In a number of cases I checked the differences on fields, but that particular one I won't say whether I did or not.

Presiding Examiner: Do I understand you made a

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a spot check?

The Witness: I made a check to see what the difference was between what they were doing and what they proposed for them to do, yes.

I think the comparison without even going to fields, of what actually happened in 1953 with the normalized 1952 is adequate proof of the accuracy of the normalization. The figures in most instances are very close together, even

by districts and in a number of cases the deliveries from the fields during 1953 were very close to those estimated or normalized for 1952. And of course when we were normalizing in 1952, we were determining our purchase gas volume that we would expect to be used in the future.

These rates are made for the future. We were expecting to get as close to that as we could.

By Mr. Da Pra:

Q. And you arrived at the conclusion that the volume of 1,047,130 Mmcf shown in column 10 of Exhibit 82 to be the proper volumes to be used in this proceeding, did you not? A. That is a volume that the company arrived at and after checking I agreed to, yes sir.

Mr. Da Pra: That is all I have of the witness.

Presiding Examiner: Are there any questions United has of this witness or any other party?

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Mr. Fletcher: No questions.

Presiding Examiner: Mr. Dougherty.

Cross-examination

By Mr. Dougherty:

Q. Mr. Stockwell, do you have in addition to Exhibit 82 before you that series of exhibits starting with 83 and running through 88? A. Yes, I have them.

Q. To start with, Mr. Stockwell, then the figures that are contained on Exhibit 82 under the first column, that is, 1953, adjusted, were delivered to you by the company, that is, United Gas Pipe Line Company? A. They were delivered to the Staff by the company, not to me personally.

Q. To the staff? A. Yes, sir.

Q. Was it the understanding that these were what you called normalized figures as well as deviated? A. Devi-

ated and normalized in column 1, and in column 10, as well as column 6.

Q. Let's talk about column 1, first. What do you understand was meant by normalized? A. I understand normalizing to adjust either volumes or expenses or what may be, to fit the sales requirements that are known as well as any known adjustments that are expected

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in the near future.

Q. As a step in determining how the purchased gas volumes should be normalized, did you determine what normalization should be engaged in with respect to sales volumes. A. We have normalized sales on 1953.

Q. It is correct to say, is it not, Mr. Stockwell, that you really always start with the sales you expect—— A. Absolutely, and that is what I have contended. I want my testimony to very definitely show that this comparison here between 1953 and 1952 is not for the purpose of determining 1952 volumes.

It was made for the purpose of determining—used by the accountants for the purpose of determining 1952 prices normalized. I took the sales actual in 1952, normalized those sales to find out what I needed, and then put in the extra gas I needed for company use, and got a figure that required 1 billion 047 million Mcf to take care of that business.

Q. And that was a lesser quantity than the company had first indicated would be the normalized figures for 1953. A. No, I don't think it is.

Q. It shows on the sheet here. What they handed you was 1,109,087 and you reduced that to 1,047,131. A. I beg your pardon, Mr. Dougherty, the column you are reading, the 101,109,087 from from is headed "1953 Adjusted

7-31-54." The volume that I used is shown in column 10, which is the 1952 normalized deviated volume that was required to meet the normalized deviated sales for 1952.

Q. Then the starting point was your computation shown in column 10, and then did they work backwards——A. I did not. The accountants did that on the determination of price because that was the shortest way at the time. I had my normalized gas requirements which required this 1 million 047.

Q. That would be a total quantity? A. That is a total quantity.

Q. Having arrived at that total quantity, how did he decide the various districts and fields from which that total quantity would be purchased? A. I did not decide that. The company decided that and their gas supply department I think knows more about where they are going to get their gas than I do or anybody else does.

Q. If they don't, they ought to. A. They ought to, so I suppose they are the fellows who ought to know where that gas would come from.

Q. I am just trying to find out what took place, you see. A. That is right.

Q. With respect to this figure of 1,047,131 M³cf in column 10 on Exhibit 82, did you then hand that figure to the



company and say "Tell me where this gas is coming from"? A. I did not. They handed that figure to me.

Q. How did they know what was in your mind as to what would be required unless you told them, Mr. Stockwell? A. They didn't know—what do you mean?

Q. How did they get the 1,047,131? A. That was the load requirements, including company use, normalized.

Q. You must have told them that, didn't you? A. No, I didn't make this originally.

Mr. Da Pra: Mr. Examiner, Mr. Dougherty is not confused at all.

Mr. Dougherty: Yes, I am too.

Mr. Da Pra: He may say so, but he is not.

Presiding Examiner: Do you have an objection?

Mr. Da Pra: Yes, I object to that question.

Mr. Dougherty: What I asked him was, I understood Mr. Stockwell to say that he had himself determined that there would be needed a quantity of gas from the purchase contracts of United to meet his normalized sales and company use that would total 1,047,131 Mmcf. That is what I understood.

By Mr. Dougherty:

Q. Is that correct or not? My difficulty is I understood Mr. Stockwell to say he had computed that figure.

Mr. Fletcher: I think if the Examiner please, that Mr.



Dougherty overlooks Mr. Stockwell's earlier testimony that the figures were handed to the Staff by the company and then by him checked, and his determination as I understand his testimony derived from his checking of the company figures which were given to him.

Presiding Examiner: That is what he said earlier in his testimony today.

Mr. Dougherty: In his most recent statement he said "I determined how much gas would be needed to meet the normalized sales and company use."

Presiding Examiner: His testimony seems to be entirely consistent, because when he said he had determined, obviously his determination consisted of a checking process. He has found out what the company's figures were and

if they weren't correct from his standpoint. That is what I understood him to say.

Mr. Dougherty: It is a question of semantics. I think when I say I have determined something, I think I have checked it.

Presiding Examiner: Perhaps the word was unfortunate.

Mr. Dougherty: All I want to do is get the facts, Mr. Stockwell.

By Mr. Dougherty:

Q. Was the 1,047,131 figure shown in column 10 prepared by the company and delivered to you?



A. It was the total gas requirement for the normalized sales which normalization I also checked and agreed to. Since that much gas was required, the company made up this statement which totalled 1,047,131, of gas purchases. They split it by fields. I didn't.

Q. Let's see if I understand the process correctly. All of the figures were prepared by the company and then were delivered to you and you checked them? A. That's right. And agreed to them.

Q. You wouldn't be here if you didn't, of course. A. Yes.

Q. Is that true with respect to the normalized sales also? What I mean now, is, did the company first prepare the normalized sales figures and come to you for checking? A. I have given you some working papers and normalized sales which explain in detail how they were determined. The normalized sales that the company set up originally were not exactly those figures, and we worked with them on that until we got to a figure that we did agree to, and the figures that we have used for normalized sales are figures that we agreed to, yes, sir.

Q. Sort of mutually prepared, I take it, from what you say. A. Call it what you want to. They prepared some

and we checked them and when we didn't agree with them we told

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them so. And sometimes they would come and sometimes we did.

Q. Then let's get back to Exhibit 82. I understand now what you did about it. In your checking process, let's turn to your checking.

First, though, let me ask this: Did you do any checking of the figures in column 1? A. Nothing other than to compare them by districts with the actual purchases in 1953. To that extent I checked those.

Q. But you did check the figures in column 10? A. Those again were checked—the main check I had on them was their closeness to the 1953 actual. But I have some comparisons, I believe.

I don't know whether I have them here or not. I know I have made them but I don't believe I have any figures here now as a comparison by fields on those two differences.

Q. Let's turn to Exhibit 83, Mr. Stockwell, which is a copy of one of the working papers with respect to this Account 745, Purchased Gas, as adjusted by the company for the Beaumont District. Was this working paper prepared initially by the company? A. It was not but it was prepared from company figures. It is not my paper, so I can't testify to it.

Q. Who did prepare this? A. Mr. Epperson.

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Q. I thought he just testified as to prices. A. He used all these volumes and they are 1953 volumes which I am not testifying to, but they are 1953 volumes that he used to get his price pushed back from the 1953 costs back to the 1952.

Q. Mr. Stockwell, I am not asking anything now about prices. I am limiting my questions to volume. A. All right.

Mr. Da Pra: Mr. Examiner, may I make a statement right now. The data which is shown in Exhibit 82 was merely used by the accountants for the purpose of repricing or backing out of this exhibit the dollars which are shown in reductions in 1953, adjusted. As you know, we gave to Mississippi River Fuel Corporation a book which is called "1953 Adjusted." This simply is used as a shortcut.

Instead of repeating a 1952 book for—which is the big volume you see on the table there—they simply backed the money out of these things to make a shortcut presentation, merely for the purpose of pricing. The volumes are the responsibility of this witness and he has so testified.

Mr. Dougherty: I am not asking anything about prices.

Presiding Examiner: If you have an objection to a question, I think you should state your objection. I understand your desire to be helpful. I am not criticizing you for it, but I think it would be better if when Mr. Dougherty



asks a question and you have an objection, you state your objection on some recognized ground instead of calling attention to various documents that have been furnished.

By Mr. Dougherty:

Q. Mr. Stockwell, I would like to discuss the volume for the Beaumont District which appears on Exhibit 82, page 10. That is the 60,728 M²cf.

Mr. Fletcher: Are you talking about column 10, page 1 of Exhibit 82, Mr. Dougherty?

Mr. Dougherty: The first Sheet, that is the Summary Sheet, Mr. Fletcher. I should have said column 10.

By Mr. Dougherty:

Q. You did accept, after checking, that volume as the

proper volume to be purchased in the Beaumont district? A. Did I accept it?

Q. Yes. A. I did.

Q. In accepting it, what did you check against that volume? A. 1952 actual on that same thing was 59,003,000. The 1953 actual was 66,401. The 1953 deviated was 66,553. The figure you are talking about is 60,728. They are all awfully close together.

Q. Does that constitute the complete examination and checking you made for the purpose of arriving at a



conclusion whether you would accept the 60,728 as the proper quantity to be purchased in the Beaumont District? A. I had at that time, but don't have here now, Mr. Dougherty, the actual figures by fields on a number of these districts which I compared with the normalized deviated volumes set up by fields in the company's statement. I don't have those now, but since the totals are so close together, the differences by fields couldn't have been far apart.

Q. Mr. Stockwell, are the volume figures that appear for the Beaumont District on Exhibit 83 figures that you used in making this check?

If I may call your attention to the fact, in column 1 there is the heading "Books." A. That is books.

Q. Clear down at the bottom there is a figure of 61,398,171 Mcf. My question is: Did you use those figures as a part of the check in arriving at your agreement with the final volume to be acquired in the Beaumont District? A. At that time I don't recall that I did because I don't think these figures had been furnished to us at the time we determined those volumes for 1952 normalized. I did have 1952 actual volumes by fields, and I had the 1952 normalized volumes by fields.

At that time or later—I think it was later, however—I got these 1953 volumes—normalized, I am talking about.

Q. This listing of fields at the left hand side of Exhibit 83 is what information? What do you understand by those names that are under the heading "Field" over at the left hand side? A. Those are district names. Is that what you are talking about?

Q. This sheet says Beaumont District, and then under the word "Field"—— A. I beg your pardon. You are talking about Exhibit 83.

Q. 83, yes, sir. A. Those are names of fields.

Q. Did you have before you for the purpose or arriving at your final conclusions the data with respect to each of those fields for the years you mentioned? A. That is what I say, I did have the actual by fields back there in 1952, and in 1952 normalized by fields.

Q. Do you know—and if you don't know, you can simply say so—whether or not the volume figures under column 1 on Exhibit 83 represent actual 1953 or some other estimate? A. They total up to very close to the actual figure I have got, so they must be actual figures.

Q. Did you make any examination of the gas purchase contracts for these various fields as a part of your check? A. Every gas purchase contract was examined by the accountants in this price determination, but that wasn't



my job in that case.

Q. Did you not examine to see what the obligations as to volumes were? A. No, I didn't examine them for that, but I made inquiry of the company regarding the minimum take-or-pay, and it seems to me, as I recall it now, there are about eight or ten places where they have got a minimum take-or-pay, but their statement to me was to the effect that in all cases they were taking considerably more than that.

Q. Mr. Stockwell, did you yourself make any inquiry as to the ability of the suppliers who supply gas under these contracts to deliver the quantities which you have assumed would be delivered? A. I am not a geologist and I didn't make any such determination.

Q. Would you mind going back to Exhibit 82 again? With respect to the figure in column 6, could you tell me whether that was a figure that you did any checking against for the Beaumont district? A. I had no occasion to check that. I told you how I got the 1952 adjusted figures. I didn't have to use 1953 or the difference between 1952 and 1953 to get it.

Q. So you did make no check of that figure in column 6 with reference to the Beaumont figure in column 1? A. I didn't need to.

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Q. I am just asking you if you did. A. No, sir, i did not.

Q. If you will just answer my question and then make your explanation it will take less time. A. A few moments ago I told you I didn't think I had this 1953 study at the time the 1952 volumes were determined, and I don't yet.

Q. Then take the Houston District, which is the second one shown on Exhibit 82, Mr. Stockwell. There you have shown on Exhibit 82, column 10, an estimated quantity to be purchased in the Houston District of 202,555 M²cf. Will you tell us what checking you did with respect to the acceptance of that figure? A. My answer to that will be no different from what I have told you about the Beaumont. The actual on Houston in 1952 was 126,424 M²cf. The 1952 normalized figure was 202,555. The actual undeviated in 1953 was 189,723, and the deviated actual in 1953 would be 191,991, which is very close to the 202,555 that has been used in the normalized 1952 deviated volume for Houston.

Presiding Examiner: Mr. Stockwell, if Mr. Dougherty were to ask you about all these figures in column 10 corre-

sponding to the districts as to how you arrived at them, your method of arriving at them would be the same. Would that be correct?

The Witness: As far as Houston is concerned. I

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treated none of the rest of these districts any different than I treated Beaumont, as I have explained.

Presiding Examiner: And the general process was the same all the way down this column?

The Witness: That's right.

By Mr. Dougherty:

Q. Is the quantity of gas shown to be taken from the Houston District the largest of any of the districts? A. From Houston?

Q. Yes. A. It is.

Q. It would appear so on Exhibit 82, Mr. Stockwell. A. That's right.

Q. In view of the fact that that is where the largest supply for the system comes, did you check the various fields which are shown on Exhibits 84, 84-A and 84-B? A. I certainly did, just like I told you about Beaumont.

Q. How much of a check did you make of each of those fields which cover almost three sheets? A. Just what you mean by how much, I don't know. For instance, if you have a field down so low that it isn't going to be productive the following year in the company's opinion, it is left out of here.

For example, this happened in 1952 as well as in 1953.

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this shows it here on Exhibit 84-A. Down there on the left hand side you see a field named "Stewart." You don't see that figure in the normalized deviated column at all. The next one right under it is Sterling. It is not there.

There is a certain casinghead purchase up there under McFarland that they knew they weren't going to get in the future. You will find that running through these papers.

On 84-B, under Greta-Tom O'Connor they have got a purchase there they left out in 1953 normalized. Then, on the other hand, they have had new fields coming in down there all the time at various places which had to be given consideration in an estimate of this kind. That is the kind of matters I talked over with the company when I got this estimate and went down this thing by fields.

Q. You have referred to some specific fields. I note on Exhibit 84-A, if you will turn to that, Mr. Stockwell, and it is down about the 8th block of figures headed "Redfish-Mustang Island." Do you find that? A. That is a comparatively new field which has gone up very materially, and it is so shown.

Q. With respect to instances like that, did you take the company's statements to you that those quantities could be obtained, or did you yourself go out and make a separate independent investigation? A. Mr. Dougherty, I am in no position to make a separate



and independent investigation of that kind. Their company men have been running that gas supply department for years. They are familiar with these fields. Their judgment is bound to be better than mine.

Presiding Examiner: I am just trying to find out what was done, Mr. Stockwell. I am not saying you should have done or it should not have been done.

A. I did not do it.

Q. Is that true with respect generally to the figures that are shown throughout this series of exhibits as to the specific field conditions? A. That is true. But as I said, when they showed a difference, either the things clear out or it is increased a normal amount. I talked it over with

their gas supply department in connection with my check.

Q. Actually, Mr. Stockwell, in essence wasn't your check a comparison of the anticipated purchases against actual for 1952 and 1953 and they came so close together you thought you were justified in assuming that the quantity would be continued? A. That is one indication, but I have done the other I told you about, too.

Q. Wasn't that the principal thing you did, though? A. I don't know whether you would call it principal or not, but it is certainly proof of the pudding.

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Q. That is what I want to find out, what you accept, you see.

Presiding Examiner: We will have a ten minute recess at this time.

(Whereupon, at 11:20 a.m. the hearing was recessed until 11:30 a.m.)

Presiding Examiner: The hearing will please come to order.

Mr. Dougherty: If the Examiner please, we have another exhibit for identification.

If the Examiner please, may we have marked for identification as an exhibit a series of photostatic sheets, the first one of which has the heading "United Gas Pipe Line Company, Total Cost of Service, Including Account 100.5, Year 1952, Adjusted." That consists then altogether of seven sheets.

Presiding Examiner: They seem to be somewhat out of order on my copy, but it consists of seven sheets.

Mr. Dougherty: There is some difference between the black lettering numbering and you will notice there is some scratching out of that and other figures that show up in white. But we have the seven.

Presiding Examiner: All right, you want those marked for identification?

Mr. Dougherty: I would if I may, please.

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Presiding Examiner: That will be marked Exhibit 91 for identification.

Mr. Fletcher: Just one number, Mr. Examiner?

Presiding Examiner: One number for this entire exhibit consisting, I believe, of seven sheets. It will be Exhibit 91 for identification.

(The document above referred to was marked as Exhibit No. 91 for identification.)

By Mr. Dougherty:

Q. Mr. Stockwell, will you take your own Exhibit, 78-A, and turn to Sheet 14? A. All right.

Q. Will you first explain the source of the purchase gas cost of $22,513,233, which is in line 1? A. That was given me by the accountants.

Q. From what exhibit put in by the Staff is that figure found? Is it identifiable in any of your exhibits? A. Only in the working papers, I believe, that the Staff accountants furnished Mississippi and also in Exhibit 91, column 6, line 1.

Q. So that as you say, column 6, line 1, shows that identical figure? A. That is the same figure.

Q. You accepted that from the accountants? A. I did.

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Q. Is that true with respect to the other figures that are in that column 2 of sheet 14 of Exhibit 78-A? A. You are speaking about the figures in column 2 of Exhibit 78-A?

Q. Yes, sir. A. I did, but you will find, Mr. Dougherty, that the figures in column 6 of Exhibit 91 are not all the same as the figures in column 2 of Exhibit 78-A.

Presiding Examiner: Sheet 14, you mean?

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The Witness: On Sheet 14 of Exhibit 78-A.—the reason being that after my exhibit was prepared, the Staff accountants made a small adjustment in taxes which affected several of the items at the bottom of that column. It affected Amortization of Gas Plant Acquisition Adjustments.

It is changed from the figure I had of 361,913 to 331,084. It affected taxes other than Federal income, wherein my figure is 2,530,036 and a figure in Exhibit 91, column 6, is 2,534,227.

It affected taxes, Federal income, wherein my figure is 1,721,047, and the figure in Exhibit 91, column 6, line 33, is 1,674,818.

It affected return, wherein my figure in column 2, page 14, Exhibit 78-A, is 3,453,915. The figure in Exhibit 91, column 6, sheet 1, is 3,484,743.

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By Mr. Dougherty:

Q. Mr. Stockwell, before referring to Exhibit 92, I would like to have you turn to Sheet 11 of your Exhibit 78-A.

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Do I understand correctly that that Sheet 11 contains the basic data by which you arrived at unit costs in connection with the determination of the cost of transporting gas in the Central Rate Zone on a unit basis? A. No, Mr. Dougherty. I testified that this sheet was prepared for the purpose of allocating the cost of transporting gas for others from the total cost of service in the Central Rate Zone before transfer in.

On lines 5, 6, and 7 there are certain unit costs that were determined and used for that purpose.

Q. Exhibit 92 is your work sheets, are they not, which were used in developing a commodity-mile and a demand-mile calculation? A. They are only part of them.

Q. They are sheets, though, that were furnished to us? A. They are some of the work sheets that I furnished you in connection with this matter, yes, sir.

Q. With respect to the determination of costs, as you testified, as I recall it, you said that you took every sales contract and worked that back through the various lines through which the gas comes. A. That is right.

Q. Will you turn to Sheet 4 of Exhibit 92, which contains the data with respect to sale for resale to Mississippi River Fuel Corporation?



A. You are going by the numbers in the black spot?

Q. Right. Do you have that page 4? A. I do.

Q. Then down under the heading of Mississippi River Fuel Corporation, which is on the left hand side, Perryville Station, will you identify those figures and tell us just what you did in order to arrive at them? A. This represents haulage in Monroe District only, and it is not an accumulative haulage from the original source of supply over. Mississippi River Fuel, Perryville Station—that item appearing about the middle of this sheet—shows under the column entitled "Annual Volume Commodity" 73,950,800 Mcf, and under the peak day volume demand column, 202,939.

Those were the commodities and demand I had to deal with. That gas is delivered just east of Sterlington Station, which is located near Monroe, Louisiana, and is delivered out of a gas supply reaching that station that comes in over Line No. 250, which is what is known as the Sarepta Line, I believe, coming from Cotton Valley field and over from Latex. Part of the gas comes in that way, part of it comes over Line 266, which is the line from Carthage field direct into Monroe and the balance of that supply comes in there from Lisbon field. That is in Monroe.

As far as Monroe mileage is concerned, I show there on the right hand side of that particular item 23,598,743 Mcf,

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that is 65 miles over line 250.

Multiplying those two figures together, I get the 1,533,-918,295 commodity-miles. I am calling it commodity-miles now and I will tell you why in just a minute. In like manner, I took Line 266 with its mileage and the Mcf shown there coming in over that line and get the 2,781,911,-145 commodity-miles. I treated the delivery from the Lisbon field in the same manner with a haulage of 59 miles, 445,652,07C commodity-miles.

Those three totaled commodity-miles shown in the column headed commodity-miles. That commodity-miles divided by the commodity in the column shown annual volume commodity gives me the average miles hauled of 64.4 shown under the column headed "Miles Hauled." That 64.4 miles hauled, multiplied by the demand shown in the peak day volume column of 202,939, gives me the demand-miles shown in the column headed "Demand-Miles."

Presiding Examiner: Will you read that last part back. (Last part of answer read.)

By Mr. Dougherty:

Q. Mr. Stockwell, as I understand this, this page 4 of Exhibit 92 and the data that you have read relates only to the movement within the Monroe District? A. That's right.

Q. Could you take us to the next district west, the Shreveport District, and follow through on the pipelines

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through which this gas moves? I am still speaking with respect to this Perryville Station deliv y that you have just testified about. A. On the Shreveport District, page

3 of 5, talking about the page number in the black spot at the top of the sheet—starting again on that page, we find under the heading "Gas Transferred to Other Districts" the word "Monroe District," line 266. That shows in the annual volume column that 69,596,512 Mcf were transferred to the Monroe District from the Shreveport District, and in the next column just to the right it shows that amount of gas had a demand component of 261,164.

That gas came partly from the Shreveport District west line, which would be the boundary between Shreveport and Dallas District. The amount of gas that was received from there was 35,094,278, and the distance hauled was 65 miles, giving us a haulage of 2,281,128,070 commodity miles again.

The balance of that gas that was transported into Monroe over Line 266 came from Sligo field, and the mileage goes as far as the Shreveport-East line, or the line between Shreveport and Monroe districts. That amount of gas is 34,482,249 and was hauled a distance of 46 miles, giving us a haulage of 1,586,183,054. Those two added together give us a total commodity-miles of 3,867,311,524, with an average haulage of 5.6 miles, and a demand-mile figure of



14,520,718 demand-miles.

That was the gas that I spoke of a little while ago coming into Sterlington over 266. I also spoke of gas coming into Sterlington over Line 250. That is shown just below the transfers to Monroe District over Line 266.

You see the words "Monroe District," Line 250. The total amount of gas so transferred into Monroe District was 24,431,399 shown in the annual volume column, with a related demand of 98,866.

To obtain the commodity-miles and the demand-miles on this particular delivery, I show the note at the bottom of the page which reads "Determination of Average Miles on

Transferred Gas from Shreveport to Monroe on Line 250."

That you will note comes from Rodessa field, Cotton Valley field, Haynesville field, South Sarepta, Sugar Creek, Greenwood and Sligo field, Line 240. The various mileages are shown in the columns entitled actual or average miles hauled, and the calculations were made in the same manner for these various pieces that go to make up the total 24,431,399. They result in a determination of a commodity-mile total of 996,439,204 commodity-miles with a related demand mile total of 4,033,733 which figure down there is transferred up to the line entitled "Monroe District, Line 250."

Q. In any way, do you combine these respective data of the Shreveport District and the Monroe District as related to



this sale to Mississippi River Fuel Corporation that we are discussing? A. It is pretty hard, Mr. Dougherty, to do that unless you first are willing to assume that the gas Mississippi River gets outside of the 1447 delivery is a composite amount of gas that comes into Sterlington Station. Then I think we can add these weighted average mileages together and get a total mileage. I want you to understand at the beginning that is based on the weighted average coming into Sterlington of mixed gas from various fields, and how much of it of any one field got to Mississippi River Fuel I wouldn't know other than the fact it is a part of a total delivery at that point.

Q. I understand and agree with you, Mr. Stockwell. You do in the Monroe District have the volumes from Line 250, Line 266 and the Lisbon field. A. That's right.

Q. Your problem is when you get beyond the Shreveport District, I presume, to try to identify the source of gas. I am willing to make the assumption of the composite stream. A. Then we will have the mileage that we had

in the Monroe District to start with for the Mississippi River Fuel, which was average on this Perryville Station delivery of 6.4.

Presiding Examiner: What are you referring to now, Mr.

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Stockwell?

Mr. Dougherty: That is on page 4 of 5.

The Witness: Then we take this weighted average figure we got on page 3 of 5 shown in the Monroe District transfer over line—that is not going to work just that way, because we have got to get the weighted average there of those two lines.

By Mr. Dougherty:

Q. Without doing it now—— A. I can do it for you.

Q. It would take—— A. It would take a little calculation.

Q. Let's not take up the time, Mr. Stockwell. But what you would do—— A. Get the weighted average of that 55.6 and that 40.8 average miles there and add that to the 64.4 and then I would come over to Shreveport and I think the only line that is carrying any gas that way is 266 at Shreveport, which has, as I recall it, about 17 miles on it or something like that.

Q. Would you next go to the Dallas District. Is that on page 1 of 5? A. That is on page 1 of 5 and it shows 21 miles. Under the transfers out to Shreveport District over Line 266?

Q. Yes, sir. A. That is 21 miles.

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Q. During the noon recess, could you make that computation so that we would have the figure that would represent the appropriate one—— A. The weighted average haulage, providing that you consider that Mississippi gets

an average of all kinds of gas coming into Sterlington, exclusive of 1447 gas.

Q. Yes.

Now I would like to take up the figures with respect to the gas that does come through the 1447 facilities, and on page 4 of 5 I see you have that identified against the Mississippi River Fuel Corporation by the words "New Sale." A. That's right.

Q. Is that Line 129 the line number of the G-1447 facilities? A. It is the line number of that part of the 1447 facilities that come from the Beaumont, Houston, San Antonio area.

Q. Is that the same line, a portion of it, that sometimes in some of these other working papers is designated as West Leg? A. That is right.

Q. Then will you tell us just how you handled this particular sale, Mr. Stockwell? A. In this case the volume shown here is an amount



coming in over that line of 39,751,128 with a related peak day of 150,000 Mcf. The mileage used here is 99 miles, giving us a total commodity-miles of 3,935,361,672, and related demand-miles of 14,850,000 Mcf demand miles.

Q. Then will you take us back toward the source—— A. That is the mileage, you understand, in the Monroe District, and that is the mileage from the Shreveport District line to the Mississippi River Fuel's delivery point.

Q. Now then, is there some portion of that same line in the Shreveport District? A. That's right.

Q. Will you tell us the page where that is shown? Is that on page 3 of 5? A. Yes, it is on page 3 of 5. Shown under "Gas Transferred Out to Other District" with the words "Monroe District" Line 129, with a volume of 98,105,119, related peak day of 324,156, a haulage of 70 miles,

a commodity-miles of 6,867,358,330, and related demand-miles of 22,690,920.

Q. Does that particular line come through any other district in the Central Rate Zone A. It does not.

Q. Then would it be possible to give the weighted average haul of that gas that is delivered to the Mississippi River Fuel Corporation through line 129 within the Central Rate Zone, I mean?

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A. Yes, sir, I think I can.

Q. If that takes any computation, we can also wait until the noon recess. A. I was just trying to figure whether it did or not.

Presiding Examiner: How long will that take you, Mr. Stockwell? Is that very long?

Mr. Dougherty: We can let it go until the recess.

By Mr. Dougherty:

Q. You have on this page 3 of 5, out at the right hand side of the sheet opposite this data for line 129, the words "Beaumont," a word I can't decipher, and then the word mileage. A. That is Beaumont-Shreveport mileage. The heading of that column says "Approximate Origin of Haul."

That would be Beaumont. And then dash and it says "Shreveport Mileage". It comes from Beaumont's east boundary, which is the boundary between Beaumont and Shreveport.

Q. Is the Beaumont District outside of the Central Rate Zone A. That's right.

Q. My recollection is that you stated you did not make a study such as this for the Southern Area? A. I did not.

Q. Which would include the Beaumont District and Houston and San Antonio?

A. No, sir, I did not.

Q. With respect to the deliveries that are made through these various lines to Mississippi River Fuel, excluding 129, now, would those lines be shown on this map which is a part of the Exhibit 4 that was submitted sometime ago, I presume?

Mr. Dougherty: Is there any other map, Mr. Fletcher?

Mr. Fletcher: That is the map that you objected to——

Mr. Dougherty: I haven't been successful yet.

Mr. Fletcher: It is a map of the system that was introduced in one of the early hearings in these rate cases.

Mr. Dougherty: Would it show on there, this Line 250 and 260?

Mr. Fletcher: I don't know about 250 and 260, because that is something that is new to me. You mean would it show 1447 facilities?

Mr. Dougherty: With respect to that, could I have a statement as to whether this particular map, Exhibit 4, does show the 1447 facilities

Presiding Examiner: I have an exhibit marked Exhibit 67. I don't know whether it is the same one or not. It is a map.

Mr. Dougherty: That is something else. That is not the one I have here. We don't have a 67 map.

Mr. Fletcher: Exhibit 4 does not reflect 1447 facilities.

Mr. Dougherty: Is there an Exhibit 67, the map that the



Examiner has

Mr. Fletcher: I couldn't answer right off.

Mr. Dougherty: I would rather use that, if it is later.

Mr. Fletcher: This does not have an exhibit number on it, your Honor.

Presiding Examiner: Is it the same as Exhibit 67?

Mr. Dougherty: Mr. Examiner, I might say that we have

a list of exhibits, and this list does show that Exhibit No. 67 is a map dated January 1, 1953, of the natural gas property owned and operated by United Gas Pipe Line Company. It was identified in Volume 23 at page 2468 by Mr. Tracht.

By Mr. Dougherty:

Q. Mr. Stockwell, can you on that map, Exhibit 67, identify these lines 266 and 250 to show the lines as they go out from the Perryville delivery point through the Monroe District and the Shreveport District and you have testified to orally? If it isn't possible, there is no need to ask any questions about it, but I just thought if it was, it might help clarify it. A. I believe I can identify them.

Presiding Examiner: Mr. Stockwell, in identifying them, I wish you would keep in mind that we are having a typewritten transcript of the words that you use. So in the course of your identification, I wish you would exercise some care so that we can get right from the transcript what it is that you are

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describing.

The Witness: On Exhibit 67 you see the junction where a number of lines come together near Monroe, Louisiana?

Presiding Examiner: Yes.

The Witness: That little square in the center of those is Sterlington Station.

From that point going west and a little south of west, you see a double line going back most of the way over to the Louisiana-Texas state Line.

Presiding Examiner: Yes, sir.

The Witness: And the single line going on through to the town of Carthage

Presiding Examiner: Yes.

The Witness: That line is designated as Line 266 by the

company. For Line 250, I call your attention again to the square representing Sterlington Station at Monroe and a line proceeding west and a little northwest from that point marked an 18-inch going to another station that is marked Webster.

That line is known as Line 250. That line is fed, part of its gas, from the line going from Webster in a southwesterly direction to Latex Compressor Station which is near the town of Bethany. All the fields that I have mentioned regarding delivery of gas to these two lines are along those routes.

You will see the Cotton Valley field near the Webster



Station on Line 250. You will see Sarepta field near that same station, and South Sarepta is a small field in that same locality.

Coming east on that line, about not quite half way, you come to Sugar Creek field, which ties into that line. That is all the ones I have mentioned on Line 250, except Greenwood and Sligo.

Greenwood you will find over near Latex Station near Bethany just northwest of there a short distance. You see the word Greenwood on this map. That feeds into those two lines, which are by the way known as Lines 211 and 212 that feed into 250 up at Webster.

Sligo field is down there just south of Shreveport, and it feeds through that system and into this line that comes up to 212 and 211 going northwest from Sligo field and ties in there.

On Line 266 I stated that some gas came into that line from Sligo field. That is the same Sligo field, and you will see the Koran plant there and Koran Compressor Station, which feeds Sligo gas into Line 266 coming southeast from Sligo field.

That Lisbon gas doesn't come into Sterlington over the Line 250, but it comes in over a transportation made by Arkansas-Louisiana from Lisbon field. It comes into Sterlington Station. There is only a small amount.

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Mr. Fletcher: Mr. Dougherty, he didn't identify for you the Rodessa field?

By Mr. Dougherty:

Q. They asked about the Rodessa field. A. I am sorry I missed that. The Rodessa field is located up here in the northwest corner of Louisiana near the gasoline plant there marked Latex. That comes down that line—I forget the number of it now, but ties into Line 211 and 212 which in turn feed east to Webster Station into 250 and on into Sterlington Station.

Q. In Line 266 you carried it as far west as a place marked Carthage. Is that what we have referred to as the Carthage field A. That is the Carthage field. It is a little bit on the east edge of it, I would say.

Q. But that is the westerly portion of the line that we are just discussing? It starts there, you might say? A. That is the westerly portion of 266. It starts there at Carthage field.

Q. And the lines which you have just described are those through which the gas moves from the Monroe, Shreveport and Dallas Districts to make this particular sale to Mississippi River Fuel Corporation ? A. That is right.

. . . . . .

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By Mr. Dougherty:

Q. Mr. Stockwell, just before the luncheon recess we had just about started on the G-1447 line, which you re-

ferred to a Line 129; and we referred to page 4 of 5 of Exhibit 92. You were about to describe on the map the way in which you followed through that line for the purpose of these computations. Will you do that for us, please, now? A. That Line, 129, starts at Sterlington station near Monroe, Louisiana.

Q. You are now referring to the map, Exhibit 67? A. That's right. It runs in a southwesterly direction down toward the points shown in Beaumont District as Magasco Station. The part of that line that is in the Central Rate Zone is from the Beaumont District boundary; that is, the east district boundary between Beaumont and Shreveport District; from that point to Sterlington Station.



Q. I observe that that portion of Line 129 that is within the Northern Area is in solid black. A. That's right.

Q. And that that which runs from the southwest, that is, into the Beaumont area and below, is in a dotted black line. A. That's right.

Q. And it is the portion that is in the solid black that you have taken into consideration in your cost determinations for the Central Rate Zone? A. The cost relating to that portion are in the Central Rate Zone costs.

Q. Before you left for the noon recess there had been a couple of computations we discussed as to what you might make during the noon recess. Have you made those as yet, Mr. Stockwell? A. Yes, sir. Based on the assumptions that you agreed to in connection with asking the question, the weighted average miles hauled over Line 250 and 266 for deliveries made from the Northern Area to Mississippi River Fuel shown as Perryville station have a weighted average haul of 137.1 miles. The other delivery there shown to Mississippi River Fuel in the amount of 39,751,128 Mcf over Line 129 has a weighted average miles hauled of 169.

That is what is shown by this haulage study I have made.

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Q. Mr. Stockwell, with respect to Line 129, are there any compressor stations located on that line within the Central Rate Zone? A. Not within the Central Rate Zone.

Q. So that in your Central Rate Zone costs you would have no cost of compressing gas with respect to line 129? A. Not in the Central Rate Zone, no, sir, because there is no compression on that line in the Central Rate Zone.

Q. With respect to Line 266, which as I understand it is the line that gets over into the Carthage field, is the gas that moves through that line compressed at any point? A. On Line 266 alone there is no compression.

Q. With respect to Line 250 and the other lines that feed into 250 which you describe, how many compressor stations are there, if you know? Can it be easily pointed out? A. There is Webster Compressor Station; Rodessa Compressor Station; Latex Compressor Station; and Waskom Compressor Station might be involved there, but it hasn't been operated very much.

Q. Is there a compressor station at Sterlington? A. There is a compressor station at Sterlington, yes, sir.

. . . . . .

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**Robert W. Epperson**

was called as a witness, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dougherty:

Q. Have you stated your name, Mr. Epperson? A. My name is Robert W. Epperson. I am a supervising auditor of the Federal Power Commission.

Q. You seem to be the indispensable man, Mr. Epperson, here, on certain matters. I apologize for you having to be so suddenly recalled from Chicago, but there is certain data that you seem to know that no one else knows.

Do you have before you the Exhibit 82 and then the series that are related to that which started at No. 83 and run through 88? A. I don't know exactly what those exhibits are, Mr. Dougherty. If you could show me what they are, I could probably identify them better.

Q. Exhibit 82 is this figure that says 1952 Adjusted.



A. That's right. I have that right here.

Q. Exhibit 83 and subsequent ones—— A. I have the actual working papers here on those.

Q. I think if that is sufficient, you may use them, or some of your associates here have already these if you want to look at these. A. I have these right here. If you want to direct your questions to Exhibit 82, I will be glad to answer them.

Q. With respect to the data that is contained in Exhibit 82 and the others, Exhibits 83 through 88, we have been advised, Mr. Epperson, that you made the computations for pricing. A. That is correct.

Q. For example, if we take the Beaumont District, which in detail is shown on Exhibit 83, would you tell us how you went about the matter of pricing gas for the purpose of these proceedings. The sheet we have, Mr. Epperson, Exhibit 83, is headed Beaumont District, Sheet 3 of" —there is not other——

Presiding Examiner: Are you referring to Exhibit 82?

Mr. Dougherty: I am referring to Exhibit 83, Mr. Examiner.

A. The total under the 1953 Adjusted is $5,947,187. There was quite a number of fields. I believe you see the

field before you in the detailed sheets that you have. I took each contract that went into these fields, each contract, and

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examined the company records to check the price that the company used to price that gas.

By Mr. Dougherty:

Q. The volumes that you used against which you applied those prices—let's stick to the Beaumont District for the moment—were what volumes, Mr. Epperson? You may refer to Exhibit 82 for that if you wish. A. I used the volume, for instance, in the West Beaumont District—that is, the top one, the natural—2,119,239 normalized for the price at 14.9.

Do you see that volume 2,119,239 on that sheet?

Q. You are talking about Exhibit 83. A. That's right. Exhibit 83 is the backup for Exhibit 82. There were five contracts under that, and I checked each of those contract prices.

Q. When you came to a total on Exhibit 83, which is out under column 10, I believe, that total—— A. That commodity price, I believe it is labeled?

Q. What I see is labeled total, $5,947,187. A. Yes, sir.

Q. That is the identical figure that we find in column 4 on Exhibit 82. A. That's right.

Q. Will you explain how you got to the final figure for Beaumont on Exhibit 82, which is clear at the end of that

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line, which is $5,470,691? A. If you will look over on the second page of Exhibit 82, you will see the supporting data for what they call the reduction in cost. For instance, the first item on that under Beaumont is North Port Neches. They show a price in there of 8.775 cents. That is the

price that was used to price 1953 normalized figures. The rest of them were similar.

Q. Then you used that price against the volume reduction? A. That's right.

Q. And subtracted it from what the previous total was? A. Exactly. It all is the same way.

Q. So that I will merely have it in the record, are these prices—and I am referring now starting with Exhibit 83, are the prices which are on Exhibit 83 under column 6? A. That is the contract price.

Q. Is that the price that you used? A. Yes, sir. I used this contract price and I adjusted it to a 14.9 price.

Q. That is in column 7? A. That is in column 7.

Q. These are your working papers, too? A. Yes, sir, that's right.

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Q. With respect to all the rest of that we have here—— A. In every case.

Q. In every case through these exhibits 83 through 88? A. That is correct, sir. I followed the same procedure. Where we had a different pressure base from 14.9, I converted to 14.9.

Q. We would be able to find the price that you use for every contract or at least every field by referring to these? A. Yes, sir. I think you could almost find every contract here because, as you note, I noted the contract prices along the back side.

Q. Mr. Epperson, other data that it is said you possess is data that is found in a series of working papers we have had identified as Exhibit 89. A. Yes, sir, I have those here.

Q. What we would like to know, sir, is whether any of the costs that are shown on Exhibit 9—and I will start with the first sheet, which out of your work papers is identified as Sheet 4 of 11—which of those costs is related to the G-1447 facilities, if it is possible to determine that. A.

Yes, sir, it is possible to determine it. It has been determined under the column that is headed "Northern Area Additional Supply Facilities." That is actually

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G-1447.

Q. Are those particular costs under that column you have just referred to related to costs of the G-1447 facilities within the Northern Area, or are those costs that are accrued with respect to facilities in the Southern Area? A. As I understand the situation, Docket G-1447 covers what they call the West Leg of the new facilities. As I understand it, Docket G-1447 is only the West Leg.

Q. So that under that column here as I see it the first figure in that column is $16,382.28 with a parentheses around it. Is that correct? A. Yes, sir.

Q. Those figures in that column relate then, as I understand it, to G-1447 facilities that are in the northern area which in this case would be the Shreveport and Monroe Districts. A. No, sir, I don't think that they are that. I don't believe the 1447 is Shreveport-Monroe Districts. I believe 1447 comes up through San Antonio, Houston, and some of those other districts.

Q. It also continues on up through the Beaumont District, Mr. Epperson. A. That probably is true.

Q. And Mr. Stockwell's data shows that it continues on up through a portion of Shreveport.

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A. That might be true. I won't dispute that point.

Q. The facilities end up in the Monroe area. A. That's right.

Q. But what we are trying to find out is which of these expenses we could relate to G-1447 so that we ourselves might take them out of the costs allocated in that Northern Area, you see. A. I believe these are 1447 expenses.

(530)

Mr. Da Pra: Mr. Examiner, may I ask a question at this point? I think maybe perhaps the witness may have misspoke himself. Mr. Epperson, doesn't Exhibit 89 show that the so-called 1447 facilities also include property in the Jackson District and the New Orleans District?

The Witness: I can probably tell you that.

Yes, there is.

Mr. Da Pra: Wouldn't that indicate there is property here that includes more than the West Leg?

The Witness: It could be, under those circumstances.

Mr. Da Pra: The East Leg as well.

The Witness: It sounds plausible.

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Presiding Examiner: The question is not "could be." Does it?

The Witness: I would say yes, offhand.

Mr. Da Pra: I can say for the benefit of the Examiner, your Honor, that the certificate authorization for G-1447 facilities are reported at 10 FPC 35 and will disclose exactly what is included in those facilities.

Presiding Examiner: If I recall correctly, reference to that opinion appears in the recent opinion of the Commission in this matter.

By Mr. Dougherty:

Q. Mr. Epperson, what I am trying to do is to determine what portion of the various costs in the Shreveport, Monroe, and Dallas districts are based upon any portion of the G-1447 facilities. I do note that over at the lefthand side of this Exhibit 89, the first page, opposite the line upon which some of these figures you referred to appear, is the word "normalizing." The items that are opposite the word "normalizing" relate to the G-1447 facilities? A. Yes, sir, a portion of them do. That 199,000 figure you are talking about?

Q. Yes, sir. A. A portion of them do. That $65,170.01 is over quite a ways.

Q. Some of that figure is in the Jackson District, some

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in New Orleans, and some in Houston and San Antonio. A. Those are not 1447 facilities.

Q. They are not? A. No, sir. The portion that belongs to 1447 is the $65,000 figure.

Q. Would that be true as to the figure that seems to be on the line called "reclassification," the $16,382.28? A. Yes, sir. The reclassification is the portion of the Beaumont District figures and the Houston District figures, San Antonio figures, and Southwest Louisiana figures that are Docket G-1447 facilities.

Q. If in our attempt to identify the costs related to 1447 facilities that would have been placed in the Dallas, Shreveport, and Monroe Districts, could we start with this column which you mentioned is headed "Northern Area, Additional Supply Facilities," and then work back to the columns which are related to the Dallas, Shreveport, and Monroe Districts? A. Mr. Dougherty, if you will look down towards the end of that first block of figures, you will see FPC adjustment reversing Northern Area Additional Supply Facilities. I take the entire amount of those Northern Area Additional Supply Facilities and spread them back to the various districts to which they belong. Does that answer your question, sir?

Q. Yes. And that would indicate that so far as field costs are concerned, none of those costs were spread to

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Dallas, Shreveport, or Monroe? A. None of those costs were.

Q. Let's take the next sheet of Exhibit 89 which is sheet 5 of 11 of your working papers, which has "Transmission

Expenses." Maybe that will give me a little more light on it.

On that page does that show any spread-back of these Northern Area Additional Supply Facilities to either the Dallas, Shreveport or Monroe districts? A. No, sir.

Q. Having in mind that a portion of the G-1447 facilities are located in Shreveport and Monroe districts, is it possible in any of these working papers to find out what those costs are, how they can be identified? A. No, sir.

Q. That is, they were lumped in—— A. If there are any costs for Docket G-1447 in Dallas, Shreveport, or Monroe area, I didn't know about it.

Q. When you prepared these working papers which constitute Exhibit 89, you took all of the costs that were built up for the Dallas, Shreveport, and Monroe districts without identifying any of them, then, as G-1447? A. Well, before I answer that question I would like to take a look at the last sheet and see if there is any. The final sheet should show. I don't know whether I have the last sheet here or not. I have 10 of 11 here. I believe that



is the last sheet, "Total Operating Expenses." I can't see any of those Docket G-1447 expenses going to those three districts.

Q. At any rate, as far as you can tell—and these are your working papers, are they not? A. Yes, sir. I made these working papers up and I made the adjustments in back of them.

Q. There is nothing in these, then, that would help us in identifying whatever costs may be in what is referred to here as the Central Rate Zone, that is, the three districts of Dallas, Shreveport, and Monroe that relate to G-1447? A. As I stated before, I do not know of any Docket G-1447 expenses in those particular districts.

Q. We have another of your working papers, or at least the Staff's working papers, that is identified as Exhibit 90, Mr. Epperson. Do you have that? A. Yes, sir.

Q. Referring to Exhibit 90, Mr. Epperson, this apparently is a statement of property plant balances—that is the way it is headed—for company working papers. You will note down on the lefthand side about the middle a heading, "Docket G-1447," with a listing of the various districts following. A. Yes, sir.

Q. Then in the first column of total there are a series of figures opposite each of those districts which come up to a



total of $128,362,313.08. A. Yes, sir.

Q. We have understood, Mr. Epperson, that those figures represent the dollars of plant of G-1447 facilities that are located in those various districts. A. Yes, sir.

Q. Can you throw any light on that? Is that a correct assumption, or are we wrong? A. I believe it is a correct assumption, Mr. Dougherty.

Q. Did you prepare these figures, Mr. Epperson? A. It has been a long time since I did this thing, but I believe that at the time I worked these figures up I came out to these conclusions that you see right here.

Q. The testimony, Mr. Epperson, is clear that a portion of the pipe line at West Leg goes all the way up to the Monroe Area and therefore is within this district. A. That's right.

Q. Then, at any rate, would it be correct for us to take these figures as being the plant in the Shreveport and Monroe Districts that is related to G-1447? A. I would say so, sir.

Mr. Fletcher: Might I ask a question for clarification?

Mr. Dougherty: Yes, sir.

Mr. Fletcher: Mr. Epperson, referring to Exhibit 90,

and the information under the heading "Docket G-1447," and

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then comparing it with the design of Exhibit 89, isn't it accurate to say that in Exhibit 89 the only 1447 facilities that you have expressly dealt with are those that are spread to the particular districts you mentioned, and the other 1447 facility volumes or monies or what not would then be absorbed within the totals shown on Exhibit 89 to the other districts?

The Witness: I think that is proper. I am almost certain that that is a proper assumption. That is right. In other words, what they did, as I see it now—as I recall it now—they pulled out the West Leg expenses out of the districts of Beaumont, Houston, San Antonio and Southwest Louisiana. But they didn't disturb the 1447 expenses in Dallas, Shreveport, and Monroe because they are in the Northern Area already.

Mr. Fletcher: That explains the design of the two exhibits. Is that it?

The Witness: That is right: that is correct.

By Mr. Dougherty:

Q. That is, there was no attempt made to identify any expenses—— A. That are already in the Northern Area.

Q. Are there any working papers that do have such a separation of costs related to G-1447 facilities? A. No, sir, we never made up any working papers along those lines.

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Q. So that all we have in the way of separation would be the plant located—— A. That is right.

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**Roy H. Crosby**

was recalled as a witness, and having been previously duly sworn, was examined and testified as follows:

Cross Examination

By Mr. Dougherty:

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Q. Where is the figure in the cost of service, then, that you were working toward as a basis for fixing your rates?

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A. Mr. Stockwell's costs, Exhibit 78.

Mr. Da Pra: You are referring to 78-A, aren't you?

The Witness: Yes, which is at the bottom of column 6, Sheet 1, $74,412,222.

. . . . . .

Q. Having in mind that dollar amount you were working toward, what was the first step you did in trying to arrive at a revenue that would equal that? A. As has been expressed on the record any number of times, I started with a figure of $74,522,116, which was an agreed upon figure. The difference between the two, in my opinion, is quite de minimis.

Q. What I am trying to get at is, did you first work on the city gate sales or on the transportation costs or on the pipe line costs as a buildup of your various rates? A. I took in effect that figure and spread it backwards among all the classes to the best of my judgment.

Q. What method did you use in spreading that cost to the various classes of customers? A. I have a little statement here which I would like to make on that.

Q. Go ahead.

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A. Rates are not exact, particularly under the circumstances of this case where United serves such a large number of customers and classes of business. Further, as I testified to on direct, I do not believe it to be good rate practice to make any drastic changes in rate form unless the existing forms do not themselves conform to good rate practice and are unacceptable.

This includes the recognition of present rate zones and levels in those zones, and between zones. The recognition of this principle and recognition of the impact of the trial rates on each class of customers results in the trial rates obtained from Mr. Stockwell's costs.

One factor in my considerations was that because Mississippi River Fuel's ratio of new gas to old was lower than the other customers, its reduction on the new volumes under rate PL-2 will be proportionately less than the other customers. I kept PL-C as low as I could consistent with equity to others.

Also, in an interconnected system such as United's, I believe that eventually it should have and will have uniform system-wide rates, particularly in the Northern Rate Area. Costs show that a differential is still justified between the Jackson and Central Rate Zones; and due to the impact that would result on the Central Rate Zone if a uniform rate were established, I do not believe that uniform rates would be

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appropriate at this time. But it did reduce the differential between the two zones as a step in that direction.

The entire matter of rate design was a package deal giving consideration to all factors involved. As a measure of the equity of the results, I believe it is a fact that the resulting distribution has been acceptable by all. I also

believe that any competent rate engineer would have arrived at exactly the same answer as I did.

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Q. Did you first start with the pipe lines on those costs? I don't see how you could start in a lump sum with everything at once, Mr. Crosby.

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A. Within the principles which I enumerated on direct and which I in effect reenumerate here and elaborate on, I took the total revenues and distributed them, looking at Mr. Stockwell's costs, being conscious of Mr. Stockwell's costs, but at the same time recognizing the rate principles which I enumerated to come up with the rates which I did.

In some cases they came very close to Mr. Stockwell's costs; in some cases they did not.

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Q. Was the first trial rate you used for this pipeline sales the 75 cents and 10 cent rates? A. I am sure it was not. It was the trial rate that was presented to the conference.

Q. I know, but I am trying to ask what you did in your various attempts in determining a rate that came out finally at 75 and 10 cents, that is, what other rates did you try for these pipelines and how did you go at it? That is all I am asking. A. I would take the data I had for pipelines and put a trial rate on it, another trial rate for transportation, another trial rate for town border, each by rate zones, add them up and see how close I came to the figure I was shooting for.

From there I would continue the adjustments back and forth until I came to something that satisfied me for the

entire problem that was before me. In this particular case, it may be noted that the revenues of the trial rates for Central

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Rate Zone pipeline is slightly lower, I believe, than Mr. Stockwell's allocated costs.

Q. Do you recall what type of rate or what rates you did use in your first attempt to find out what should be the rate recommended for the pipelines in the Central Zone?

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Presiding Examiner: Are you able to give the witness the question?

(Last question read)

A. I did exactly what you suggested, Mr. Dougherty. I tried numerous combinations. I don't recall any of the exact figures. I know I had a range on either side of the 75 cents and 10 cents. I would try one combination with Central and then all the way through the others, and I would go back and take another look at it.

One of the main considerations for finally settling on the 75 and 10 cents is that it is a single rate for the pipelines off the transmission in the Central Rate Zone. As I mentioned in expressing my general principles, it reflects in between the existing rates of which PL-3 is 65 cents and 9 cents, and

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PL-2, which is $1.30 and 12½ cents. And my judgment consisting of all the other factors involved in it, the 75 and 10 appeared to be a reasonably proper rate.

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By Mr. Dougherty:

Q. Mr. Crosby, at the left side of your Exhibit 79, you refer to these existing rate schedules of PL-3, PL-4, and PL-2? A. Yes, sir.

Q. In your working out of rates, did you at any time consider and attempt to develop a separate rate in substitution for each of those three as distinguished from working out a single rate? A. No, sir, I did not.

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Q. Well, I don't know whether you meant the Jackson rate or the Central Zone Rate was predicated. A. "It" is the differential between the two rates.

Q. What were those costs and certain other practical considerations that you took into account in working out a difference in level? A. The costs, of course, are reflected in Mr. Stockwell's cost allocation 78-A; one of the other considerations, as I explained on direct, is that I believed it good rate practice to adhere to United's present rate form to the greatest extent possible.

United has always maintained higher rates than Jackson Rate Zone and the adjacent Central Rate Zone. Witness

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Stockwell's cost study, Exhibit 78-A, indicates a difference in cost that exists between the two zones. So I could see no basis for proposing uniform area rates in the entire Northern Area at this time.

I have reduced the differential, but the complete elimination of it would result in an excessive impact on customers in the Central Rate Zone.

A further consideration was the recommendation Mississippi River Fuel, because of its ratio of new volumes

(558)

of gas to old, as I mentioned before, is lower than that of any other pipeline company and would be affected to a greater extent by the impact of my single rate than would other pipeline companies because of the benefit less in proportion in reduction in the PL-1, 2 and 4 rates than would the other customers.

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Thus in designing my rates, I strove to keep trial rate PL-C as low as possible consistent with equity to other customers so as to keep the net cost to Mississippi as low as possible. That was one of my considerations at that time. That was distinctly in my mind.

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Mr. Fletcher:

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Now, the bland assumption in this position that all of United's suppliers are subject to the jurisdiction is a question of law to which the gentleman is a stranger. And in East Texas, your Honor, that is none of his business. That is a matter that concerns solely those particular suppliers, including the Union Producing Company and the Commission. And I believe

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the Commission is thoroughly competent under the authority given to it under the Act to determine what is its jurisdiction, who is subject to its jurisdiction, and what steps may be proper to assert that jurisdiction. And all of this fol-de-rol about a legal rate which is pure sham—and I am not trying to be ugly, but it is pure sham so far as the issues Mississippi asked to be heard on, and which

the Commission gave them the right to be heard—has nothing to do with that question; because obviously when the Commission comes to determine the public interest, which is the consumer, not United and not Mississippi, but the consumer, it is more than somewhat absurd to say or suggest that the Commission is going to cut off gas service because some supplier does not comply with its rules and regulations.

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**Excerpts From Transcript of Hearing Held December 13, 1954**

In the inception of these matters—I started to say two years ago, at the first hearing, and I am lost now. I don't know whether it is two or maybe longer than two, but pretty nearly two—Mississippi River appeared by an attorney and that attorney was here for two or thre days.

After that, Mississippi made arrangements that all of its exhibits—and the request was made of me and I made arrangements to honor the request—that all exhibits which would go to Mississippi should be thereafter for its behalf presented to some third person who came in once a day through the remainder of the hearings and gathered up an armload of exhibits, one of which set of Exhibits was for Mississippi.

The point I make, your Honor, is that this Johnny come lately opposition—and I am not being ugly, I am trying to shortcut my language, and if I use a little bit of slang,—

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will you pardon me—This Johnny Come Lately opposition that now so suddenly blooms has not been evidence in two years, and while that two years of hearings went on, on the subject of Union that now becomes so delectable a bone to be dragged back and forth in the dust like a

dog chews at the mouth—the question of Union and Union's rates was the subject of testimony. And that testimony showed, and your Honor will know it and can take knowledge of it—and these gentlemen ought to know it, if they don't they can very quickly determine it themselves and their protestations of deep ignorance to the contrary notwithstanding—that evidence showed, your Honor, that in every instance where a primary term of contract was approaching its terminal period and the fair field price of gas had increased in an area, that the policy was to negotiate and increase term in return for some increased consideration.

That I won't say was in 100 percent, but it will come so close that the exception will be de minimis. That evidence showed that under that policy there had been some increases in all contracts, including Union. That evidence also showed that Union's price, not in July 1954—no suggestion of 174-A—that Union's price was averaged under the fair field price that was paid in arms' length contracts to third parties.

If you will hold that just a second—and mind you Mississippi was not there to cry "Foul." Mississippi was not



there to object. We thought, until this astonishing procedure here this week—Mississippi, like the other, if I may say so, members, so to speak, of the United family, that is, its customers, knew that situation and agreed to that situation. They never objected. Nobody else ever objected.

The objection now, I charge, sir, is not an objection of principle. I say that Mississippi thinks, now that it is interested solely in diversion and division and dissension, I say that Mississippi thinks an exception that mysteriously covers this matter is of more practical advantage to it than the truth.

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Presiding Examiner: The staff? I would appreciate it if the staff would be brief. As the staff knows, there has been a considerable exporation of this problem. If there have been statements made which the staff does not agree with or factual matters, I don't think any extensive discussion of them is necessary.

I would appreciate it if the staff would address itself, one, to the problem of my power; and two, to the materiality and relevance of the evidence sought by this subpoena.

I would appreciate that very much, and of course I do not intend to confine the staff to any particular statements that it might wish to make. I appreciate it if the staff would make such statements as it believes necessary to present fully the position of any matter in which it appears; but I would appreciate it if the staff could be brief.

Mr. McAllister: At the outset, in the statement regarding the subpoena, we are confronted with the complaint again of lack of cooperation. I could skip that, but I am not going to for the simple reason that there was no element of cooperation

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involved in the position which Mississippi has taken here.

It is the very antithesis of cooperation, and when the request was made to me first about producing papers, there was no thought of cooperation. It was extra-legal. "We are giving you this advance information so that you can be prepared."

They called the witness that they wanted—Mr. Kaufmann—and asked him; and when Mr. Kaufmann asked me whether or not he could produce them or whether or not it was agreeable as far as the Commission is concerned, I simply advised him that if there was such a request to be made to counsel, I was available to hear it. And if

there was a request to be made upon the record, I was sure that the Examiner would entertain it.

There was no thought of cooperation. Whether the data requested requires a compilation or an assembly of data, they stand in the same category. And what I said the other day stands with respect to that.

The Commission does not have the staff available to compile or assemble the data which, if someone else wants to use it and they want to compile it and assemble it, it is available in the public reference rooms of the Commission to the extent that it is available.

An application for a certificate of public convenience and necessity is a matter of public record. The filing of a rate contract or rate schedule or a tariff is a matter of

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public record.

If Mississippi perchance at this late hour has troubles, they are of their own making.

United Gas Pipe Line buys gas, some of which represents gas that moves in interstate commerce, and some of that represents gas that is only intra-state in nature. The subpoena asks for all of the gas purchase contracts.

There is no physical way that the Federal Power Commission, Ed Kaufmann, or anybody else can determine what makes up all of the gas purchase contracts of United Gas Pipe Line, or which of those contracts, if they were all known, would represent the purchase of gas which was to move in interstate commerce and which or what part or what companies would sell gas that moved only in intra-state commerce.

I stated earlier I was going to call attention to some of the errors. I call them errors, but I don't know what they mean. Mr. Horning said, "The normalization for 1952 exceeds the actual."

Now, I don't know whether he is talking about gas or

horse races or what. There is no such thing in this record where normalization of 1952 exceeds actual. I don't know what he is talking about. But he talked a half hour about it, so I think it merits some mention on my part.

It is stated here repeatedly on the part of more than one that this gas in this record has been priced at July 1, 1954.

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That is absolutely not right. Exhibit 82 shows that it is priced at December 31, 1953. That exhibit was offered by Mississippi.

If perchance in order to confuse this record some people like to talk about July 1, 1954, it serves no purpose. The actual facts are that gas was priced in certain volumes at July 1, 1954; and when other volumes which were determined to be the proper volumes for 1952 were priced, it was found expedient to check back from the other volumes and eliminate from consideration volumes or price that would give you true actual or cost for the proper volume at December 31, 1953.

And there is no amount of talk or confusion or misstatements or half statements or innuendo that we have had here this morning on behalf of Mississippi that will convert that price from December 31, 1954, to July 1, 1954.

Furthermore, this record shows that, disregarding volumes and relating it only to price, and using the July 1, 1954, price applied to the proper volumes for 1952, it only amounted to a difference of $33,000. That is, the difference in price alone between December 31, 1953, and July 1, 1954, applied to the same volume of gas that was involved in this case amounts to $33,000 and that out of $89 million.

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Mr. McAllister: I don't intend to reply to any comments that are made afterwards, but it is a full exemplification of the pig under the gate who squeals the loudest when he gets caught.

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**Excerpts From Transcript of Hearing Held December 14, 1954**

**William A. Dougherty**

was called as a witness having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Horning:

Q. Will you state your full name, please, sir? A. William A. Dougherty.

Q. And your address, sir? A. My office address is 30 Rockefeller Plaza, New York 20, New York. My residence is 118 East 54th Street, New York 22, New York.

Q. What is your occupation, sir? A. I am an attorney at law.

Q. How many years have you been engaged in the practice of law? A. Thirty-five.

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Q. And in what states are you licensed to practice? A. Ohio, New York, and some of the United States District and Courts of Appeals and the Supreme Court of the United States.

Q. In connection with your practice of law, did you represent Mississippi River Fuel Corporation, and do you now represent that company? A. Yes. My connection with the legal affairs of the Mississippi River Fuel

Corporation commenced October 1, 1933, and have continued to date.

Q. What is your present title, if any, for that company? A. At present I am designated by a resolution of the Board of Directors as General Counsel.

Q. And how many years have you been engaged as General Counsel for Mississippi River Fuel? A. With that specific designation, since 1943. The ten years prior to that time I did not have any specific designation, but it was my responsibility in the organization with which I was connected then to have charge of the legal affairs of the company.

Q. And in connection with the legal affairs of the company, do you have knowledge personally of the contract relationships which now exist and have existed in the past between Mississippi River Fuel Corporation and United respecting



the purchase of gas by Mississippi River Fuel from United? A. I do.

Q. Would you just tell his Honor the history of those contract negotiations and what they are at the present time? A. I think I should say that my first connection came with these contracts with Mississippi River Fuel Corporation October 1, 1933. Previously I had practiced law in Cleveland, Ohio, and on that date I went to work for the Standard Oil Company of New Jersey as legal adviser to the administrative group that looked after their subsidiaries occupied in the natural gas field, and also companies which they had stock ownership in but which were not 100 percent owned.

One of those was Mississippi River Fuel Corporation. It was my duty to familiarize myself with all their purchase contracts and sales contracts. I did so.

At that time the contracts which were in existence were

three basic contracts which had been made by three predecessor companies—that is, three companies predecessor to United Gas Pipe Line Company.

Those contracts had been made August 1, 1929, and one contract was between a company known as Moody-Seagraves Gas Company, Inc. That contract later, after the passage of the Natural Gas Act, was filed by United as its FPC Rate Schedule No. 9.

A second contract was between Industrial Gas Company



and Mississippi River Fuel Corporation. That was subsequently filed by United as its FPC Rate Schedule No. 10.

Presiding Examiner: What was the date of that contract?

The Witness: August 1, 1929. All three are of that date.

The third contract was with the Palmer Corporation of Louisiana. That was filed by United as its Rate Schedule No. 11, also dated August 1, 1929.

The gas supply of Mississippi as provided in that contract and others related to the Monroe field, which was the sole source of supply when the company started operating in November 1929. The three contracts I have mentioned provided for the sale of gas from the Monroe field, the Moody-Seagraves, FPC No. 9, for 10 percent of Mississippi's requirements, the Industrial Gas Company contract, FPC No. 10, for 20 percent, and the Palmer Corporation contract, FPC No. 11 for 10 percent.

The sum of those three made 40 percent.

Within two or three years after that United Gas Pipe Line Company—that is the company now that is that—took over the properties of the three original contracting parties, the vendors, so that from that time the contract arrangements that formerly were embodied in these three separate contracts were in effect merged.

Mr. Meiburger: What date was that, Mr. Dougherty?

The Witness: I can give you that in just a minute.

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There was a letter dated July 3, 1934, from what was then called United Gas Public Service Company, signed by the late R. H. Hargrove, who was a vice president, addressed to Mississippi River Fuel Corporation, which stated that United Gas Public Service Company had acquired the rights, interests and liabilities of Industrial Gas Company, the Palmer Corporation of Louisiana, and Moody-Seagraves Gas Company, Inc.

The exact date of that acquisition is not stated in the letter, but it was around about that time in 1934.

I have here another letter that is dated March 11, 1931, which advised that certain other properties had been transferred to United Gas Public Service Company.

Mr. Meiburger: It would be at least sometime prior to 1934?

The Witness: Yes, it would be. As I say, in none of these letters is the date stated when effective, but it was in that period.

Those three contracts were modified, amended, and supplemented from time to time. That is, I think it will be clear if I bring this group of contracts down to the present filing in United's conversion Gas Tariff which was filed in the summer of 1952, wherein a Rate Schedule PL 3 was incorporated.

At that time United filed in accordance with the requirements of Section 154.85 of the Commission's Rules and

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Regulations the statement which identified the various contracts and provisions of contracts which were to be deemed to remain in effect and which were not to be considered as superseded by the Gas Tariff which was then filed.

So that the contracts which I have just described were specifically referred to in each of the reference sheets for

Rate Schedules 9, 10 and 11. By that reference, these August 1, 1929, contracts were continued in many respects, and those respects in which they were not retained, I think, were of no continued pertinency.

The contracts did provide that all the supplies should come from the Monroe field, and I think that is one of the provisions that is not retained.

There were executed, as I say, certain supplements to those original 1929 contracts in the period between 1929 and 1937, which have long since ceased to have any effect except one, and that has been continued in effect as a part of the service agreement by the reference sheets filed by Unitd in connection with its PL-3 schedule.

Supplement No. 2—and I might say that, although there were these three Rate Schedules, 9, 10 and 11, as these supplements were filed this would have been Supplement 2 to each of those—has been continued and what it did and does is to deal with a particular amount of gas that is sold to the Crosset Lumber Company, an industry in Arkansas, as excluding



from the requirements of Mississippi's purchases that particular quantity. It is of no particular bearing, I think, on the question here.

Supplement 1 was a tax adjustment supplement which has not been retained and has long since lost its application. Supplements 3, 4 and 5 were letter agreements which deferred the collection of an increased rate for three periods of one year each, and those were all made before the Natural Gas Act became effective.

Supplement 6 was one that did deal with the question of gas supply—I withdraw that. Supplement 6 has not been retained. It was an agreement January 20, 1937, which extended the original terms of the three August 1, 1929, contracts from the then stated date of November 29,

1949, to February 2, 1952, because there was some financing that Mississippi engaged in.

That has not been retained and is no longer of any force and effect and is not pertinent.

Supplement 7 was the first agreement which in any way changed, you might say, the gas supply source from the Monroe field under these contracts. It was a letter from United Gas Public Service Company, as the name of the company then was, signed by the late R. H. Hargrove, Vice President, and addressed to the Mississippi River Fuel Corporation, St. Louis, Missouri, dated August 15, 1937, and was accepted on August 17, 1937, by

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F. H. Lerch, who at that time was a vice president.

This Supplement 7 in the reference schedule which was filed by United with respect to their Rate Schedules 9, 10 and 11, and in connection with their tariff filing, excludes this Supplement 7. It is, however, in the historical sequence of gas supply, important.

It states in substance—and is here for a complete examination if it is desired—that a field known as the Rodessa field in Cass County, Texas, and Caddo Parish, Louisiana, Sugar Creek field in Claiborne Parish, and the Cotton Valley field in Webster Parish, Louisiana, a supply of gas from those fields is available and United would deliver to Mississippi up to 50 percent of their 40 percent of Mississippi's requirements of gas from those fields, you might say in substitution for the gas that otherwise would come from the Monroe field.

To that Supplement 7 there was a supplement which is referred to as Supplement 1 to Supplement 7 to FPC Rate Schedules 9, 10 and 11. That was a letter dated November 22, 1939, from United Gas Pipe Line Company, signed by M. A. Abernathy, Vice President. This is the first that

the name appears in these documents as having been changed from United Gas Public Service to United Gas Pipe Line Company—addressed to Mississippi, as I said. This refers to the August 15, 1937, letter, which had been filed as Supplement 7, Rate Schedules 9, 10 and 11, and stated that, instead of the 50 percent of the

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requirements to be delivered from these three other fields than the Monroe and Richland fields—I should add that Richland was a small field and didn't produce very long—that should be revised up to 100 percent, so that by that letter agreement, which was accepted November 27, 1939, by Mississippi by Ben C. Comfort, who was then vice president and manager, gave United Gas Pipe Line Company the right to deliver all of the gas under its contracts from these other fields rather than only 50 percent from the other fields.

That supplement has been designated as not retained, and I say it is essential to the sequence of this narrative.

Supplement 8 was a letter agreement dated July 30, 1934, which deals merely with certain dispatching and billing arrangements and has been retained on the reference sheet I have referred to.

Supplement 9 was a proposed contract which had been filed but was subsequently withdrawn. It was dated August 14, 1949. No, it wasn't dated that, it was cancelled as of August 14, 1949. It was dated sometime around in the '30's, but it is of no significance at the present time.

Supplement 10 was a price adjustment letter agreement dated March 29, 1943. It has not been retained in the references heet and no longer is of any significance.

Supplement 11 was a contract made between United Gas Pipe Line Company and Mississippi River Fuel Corporation dated

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September 7, 1945. This contract as well as these others that were entered into subsequent to my connection with the company, were worked on by me and with representatives of United.

This contract was negotiated with the late Mr. R. H. Hargrove, who was the vice president of United Gas Pipe Line Company Mr. Ben C. Comfort, who then was the president and manager of Mississippi River Fuel Corporation negotiated that on behalf of Mississippi and I was present and a member of the conferences and did work on the contract.

This contract amends the 1929 contracts as previously amended and supplemented, and provides that the gas in Article 3 of the contract deliverable by seller to buyer will be transported by seller through a pipeline which seller proposes to construct, from the Carthage Field in the State of Texas to a point in said Monroe field.

The contract for the first time changes the form of rate from a straight Mcf rate to a two part rate, and that rate was a monthly demand charge of 38 cents per Mcf, and a commodity charge of 5 cents.

The contract in Article 6 provided for certain notices to be given for additional quantities of gas which might be desired by Mississippi from United and provided for a certain advancement of funds by Mississippi to United if requested in the event that it would be necessary to increase the capacity of the Carthage-Monroe line.

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In the reference sheet which United has filed with respect to this contract, there have been retained the provisions of it except Articles 4, 5, 6, 8 and 9. Articles 6 and 8 from Mississippi's standpoint are particularly important and should be left in.

This contract at that time contemplated and did provide for 73 million cubic feet a day as a quantity.

Still United's obligation was on a percentage of the requirements of Mississippi. Supplement 12——

Mr. Meiburger: May I just ask a clarifying question there, Mr. Dougherty? Do you mind, Mr. Horning?

Mr. Horning: Not at all.

Mr. Meiburger: Do I have the Examiner's permission?

Presiding Examiner: Very well.

Mr. Meiburger: As I understood what you have stated, is that this contract, Supplement No. 11, contract dated September 7, 1945, amended the 1929 contract and provided that the gas deliverable by United could also come from the Carthage field? Was that your statement?

The Witness: Let me read it. It is just one sentence. Article 3: "It is contemplated that the gas deliverable by Seller to Buyer under said Existing Agreement"—parenthetically the terms "Existing Agreement" are capitalized and they refer to the three 1929 contracts—"as herein amended, will be transported by Seller through a pipeline which Seller

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proposes to construct from the Carthage field in the State of Texas to a point in said Monroe field."

That closes the end of that sentence and the quotation on that point.

By Mr. Horning:

Q. Proceed, Mr. Dougherty. A. Supplement 12 was a letter agreement dated April 29, 1947, from United Gas Pipe Line Company, signed by M. A. Abernathy, Vice President, addressed to Mississippi River Fuel Corporation, accepted May 1, 1947, on its behalf by Ben C. Comfort, President.

This letter dealt with certain gas to be delivered to Texas Eastern Transmission Corporation from the Carthage-

Monroe line, and in effect was merely an operating arrangement, but I am mentioning it because it is one of those documents that has been retained by United in its reference schedule.

Supplement 13 was not retained. Supplement 13——

Mr. Da Pra: May I ask a question before you continue?

The Witness: Yes, sir.

Mr. Da Pra: Supplement No. 12—did that have any cancellation provision in it?

The witness: Yes. It said that Mississippi may cancel this arrangement after January 1, 1948, on 30 days' notice.

Mr. Da Pra: Thank you.

The Witness: Supplement 13 was an agreement that had



entered into between United Gas Pipe Line Company and Mississippi River Fuel Corporation dated February 19, 1948. It had been filed by United as Supplement No. 13 to FPC Schedules 9, 10, and 11, was suspended by the Commission in Docket G-1022, and then subsequently withdrawn by United on July 13, 1948.

The docket proceeding was then terminated by order of July 20, 1948. So it has no significance here.

Supplement No. 14 is a letter dated August 31, 1948. That is a letter from United Gas Pipe Line Company dated August 31, 1948, signed by W. A. Abernathy, Vice President, accepted on behalf of Mississippi September 8, 1948, by Ben C. Comfort, President.

This letter dealt with the permission granted by United to Mississippi to enable Mississippi to take certain gas from Arkansas-Louisiana Gas Company. It in effect reduced what normally would have been the requirements equivalent to 40 percent of Mississippi's gas requirements by 5 million cubic feet a day.

That Supplement 14 has been retained by United.

Supplement 15 is a contract dated November 16, 1949,

between United Gas Pipe Line Company and Mississippi River Fuel Corporation. It was entered into pursuant to a letter which not not filed as a supplement, but is dated March 28, 1949, addressed to United Gas Pipe Line Company, Shreveport, Louisiana, by Mississippi River Fuel Corporation, by Ben

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C. Comfort, President. That letter requested that United's percentage which formerly had been 40 percent of Mississippi's gas requirements, except for this Arkansas-Louisiana quantity, would be increased to 65 percent commencing November 1, 1949. That is, it was a request by Mississippi for that increase, and the letter states that that would be approximately 195,000 Mcf per day.

That contract was filed by United as Supplement No. 15. The contract terms have been retained in the reference sheet, except Article 2, which deals with the price at which the gas was to be sold and provides for an escalation of price clause.

That has been superseded by the filing of PL 3 Rate Schedule.

Article 3, which is a tax reimbursement clause, Article 5, the statement of an obligation to file with the Federal Power Commission, and Article 6, stating that this agreement should be effective when facilities authorized by Docket G-1252 should be placed in service.

None of those excluded articles are effective today. The remaining portions of the contract have been continued.

That contract provided for an increased price. The monthly demand charge was 45 cents, and the commodity charge, 6½ cents. There was no minimum stated. The maximum was 195,000 Mcf per day.

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Mr. Da Pra: Did you say there was no minimum bill in that contract?

The Witness: I said there was no minimum quantity required.

Mr. Da Pra: Was there a minimum billed?

The Witness: It was a demand charge.

Mr. Da Pra: Do you know the amount, sir?

The Witness: It would be 45 cents times 12, times 195,000.

Mr. Da Pra: We can compute it, Mr. Dougherty. Thank you.

The Witness: That is what it would be, anyway.

Now, under date of the same day, November 16, 1949, a letter agreement was entered into, the letter being from United Gas Pipe Line Company, signed by A. D. Greene, Vice President, accepted and agreed to November 16, 1949, on behalf of Mississippi by W. G. Marbury, President. That letter agreement was filed as Supplement No. 1 to Supplement 15 to FPC Rate Schedules 9, 10 and 11, and in effect provided for an adjustment of the commodity rate under certain circumstances.

I might say that that is the subject of a controversy which went through this Commission and is now pending in the United States Court of Appeals of the Fifth Circuit so I will make no comment about it. But that was the basis of that letter, and it did have that provision in it—that is, a provision for a certain recomputation at the end of each yearly period.

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Presiding Examiner: The hearing will please come to order.

By Mr. Horning:

Q. You may proceed, Mr. Dougherty. A. Just before the recess I had identified and referred to a contract or a letter agreement of November 16, 1949, which had been filed by United Gas Pipe Line Company as Supplement No. 1 to Supplement 15 to FPC Rate Schedules 9, 10 and 11.

That is retained by the reference sheet of United, except the last two sentences of the second paragraph, which relate to the matter of this adjustment that I previously referred to.

Those contracts—that is, the three contracts dated August 1, 1929, which were on file as Rate Schedules 9, 10, and 11—and the various supplements which I have identified and referred to are the documents which constitute the contract between United Gas Pipe Line Company and Mississippi River Fuel Corporation, which were in existence at the time the Gas Tariff was filed and which were made the subject of these reference sheets filed by United in connection with the filing of the Gas Tariff, and the rate for which was stated in Rate Schedule PL-3.

That is the one which now states a monthly demand charge of 63 cents per Mcf and a commodity charge of 9 cents, and which was under suspension but is now in effect under bond,

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and is involved in Docket G-2019.

The other contract which Mississippi has with United was made subsequent to these to which I have made reference. There was one bit of information I left out, and that is in the 1945 amendment which is Supplement No. 1, the term was extended to November 1, 1966, and no change has been made in that termination date.

The other contract which United Gas Pipe Line Company and Mississippi have was filed by United Gas Pipe Line Company as its Rate Schedule FPC 115. The contract itself is dated December 1, 1951.

Q. Excuse me, sir. What was the Rate Schedule number? A. 115.

Q. That is what is called the new contract, is it, Mr. Dougherty? A. Yes.

Q. Before you proceed to that, may I ask you just one

question respecting the old contract. What was the source of gas under the old contract as you have described it? A. It was the Monroe Field, the Richland Field in Louisiana, originally; then expanded to include the Rodessa, Sugar Creek and Cotton Valley Fields; and then other fields in Louisiana; and then the Carthage Field in Panola County, Texas.

That was the last designation of any other source of gas



supply, so that that would all be in Louisiana and Northeastern Texas.

Q. Would that all be in United's Northern Division? A. As referred to in this proceeding, that would be within what is refegred to as the Northern Division.

Mr. Da Pra. May I ask a question at this point, Mr. Examiner, in light of that? Mr. Dougherty, does Supplement No. 11 and Supplement No. 15 and the contracts to which they are supplements specifically mention Carthage Gas Field?

The Witness: No. 11 does, Mr. Da Pra. I read that in answer to a question. It is Article 3.

Mr. Da Pra: Would you read that Article 3 again?

The Witness: Surely. It is Article 3 of the contract dated September 7, 1955, which was filed as Supplement No. 11:

> "It is contemplated that the gas deliverable by seller to buyer under said Existing Agreement, as herein amended, will be transported by seller through a pipeline which seller proposes to construct from the Carthage Field in the State of Texas to a point in said Monroe Field. Seller agrees to deliver said gas at the point of delivery established in accordance with the provisions of Article 2 hereof against the varying pressures (not, however, to exceed 450 pounds per square inch gauge) existing in Buyer's

pipeline at such point of delivery."

That is the end of Article 3.

Then there is another reference to Carthage in the contract in Article 5 which provides that Seller would, up until November 1, 1946, upon demand from Buyer "deliver to Buyer from Seller's Carthage-Monroe line at the delivery point established in accordance with the provisions of Article 2 hereof gas in an amount equal to the difference between Buyer's full input requirements for its pipeline system and the amount of gas then currently being received in the Monroe Field by Buyer from Seller (under the provisions of the Existing Agreement) and the other vendors from whom Buyer is then purchasing gas."

That closes the sentence that relates to that.

Then in Article 6 there is a reference to Carthage in that it states—I will try to paraphrase this—that after May 1, 1946, and prior to May 1, 1961, Buyer could notify Seller if Buyer desired to increase Seller's percentage of Gas requirements; and then if, on that date, Seller has sufficient line capacity in the Carthage-Monroe line, such additional amounts would be made available. And if Seller didn't have sufficient line capacity, then Seller would increase the line capacity of the Carthage-Monroe line and in that connection the Buyer would advance to Seller funds required for that increase of capacity, but not exceeding $500,000.

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Then provision is made for repayment of that amount with interest.

Mr. Da Pra: When you mention Buyer in there—

The Witness: That is Mississippi, and the Seller is United Gas Pipe Line Company, Mr. Da Pra.

Mr. Da Pra: Are there the same provisions in Supplement 15, sir?

The Witness: In Supplement 15 I think there is no direct reference to that. Supplement 15 in Article 1 contains this provision, but first I should say there is this reference in the Preamble to the request by Mississippi to increase United's percentage of Mississippi's requirement up to 65 percent. Then Article 1 reads as follows:

> "It is contemplated that the increased quantities of gas resulting from Buyer's said notice of March 28, 1949, will be transported by Seller by means of additional capacity to be provided by the construction of a pipe line looping a portion of Seller's Carthage-Starlington 24 inch line, which Seller proposes to construct as set forth in Seller's application to the Federal Power Commission in Docket No. G-1252."

That is all of Article 1, and I am sure it is all of any specific reference to Carthage.



There is nothing else except a general provision in Article 4 which says, "Except as herein specifically changed and amended, said Gas Sales Agreement as heretofore amended shall remain the same and continue in full force and effect as written." But there is no other specific mention.

Mr. Da Pra: Thank you, Mr. Dougherty.

By Mr. Hornig:

Q. Would you proceed, then, on the new contract? A. This contract, which as I say was filed by United as its FPC Schedule No. 115, was the subject of negotiations which I had some part in and I worked on the contract in its preliminary form and its final form.

There was what is referred to as a Precedent Agreement

dated August 11, 1950, and that is in the form of a letter from United Gas Pipe Line Company, signed by M. A. Abernathy, Vice President, and is addressed to Mississippi River Fuel Corporation and accepted and agreed to by Mississippi, or on behalf of Mississippi by W. G. Marbury, President.

That letter refers to the proposal to enlarge their pipeline system by the facilities described in FPC Docket No. G-1447, and then provides that in the event United gets a certificate; that certain financing is completed satisfactory to United; then United will enter into a contract with Mississippi for the sale of gas in the form which is attached to this Precedent Agreement. There is such a form



attached.

The final contract which was entered into, dated December 1, 1951, varies somewhat from the terms of the exhibit attached to the Precedent Agreement. But this is the contract that refers to G-1447 facilities and then provides for the sale of a maximum quantity of either 100,000 Mcf or up to 150,000, as Mississippi might designate in writing on or before February 2, 1952.

The contract also provided that, in the event Mississippi's Monroe Field supplies from the other suppliers in the Monroe Field should diminish, United would agree to increase deliveries by an additional 60,000, which fixed the maximum daily quantity at 210,000 Mcf.

Actually what happened was that Mississippi elected to take the 150,000 Mcf on February 1, 1952, and that is the contract quantity.

The reference sheet which United has filed retains this agreement, all of the Preamble, all of Article 1, all of Article 2 except Section B and the second paragraph of Section C. Those relate to annual minimum requirements,

and I think are included in the General Terms and Conditions of the Gas Tariff which United filed.

The second paragraph of Section C has to do with reducing the annual minimums under certain circumstances. That had not been retained in force.

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Article 3 was retained except the second and third paragraph, and I think those matters have been included in the General Terms and Conditions which United States filed in its Rate Schedule. Then Articles 4 through 11 inclusive have been omitted from the contract, and those, I think, likewise are the metering clauses, the clauses relating to unit of measurements, the quantity provisions, and the price provisions, then certain specifications as to what is a day and a month. And all of those, I think, are included in the General Terms and Conditions.

Article 10 in the contract makes certain reservations for deliveries to gas utilities for resale to domestic and industrial customers, making this contract subject to the requirements of that nature.

Article 11 is a force majeure clause, and I think that is included in the General Terms and Conditions.

Article 12 is retained. It is merely a default clause, and Articles 13 and 14 are not retained. They are provisions on warranties and a provision making the contract subject to all present and future orders of regulatory bodies having jurisdiction.

Article 15 is retained, and that is the term. The term of this contract is March 1, 1977, which is 11 years longer than the other contract.

That constitutes the agreement which related to the

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G-1447 facilities. That is a description of the two contracts as they were made.

(784)

Q. What was the source of the gas under this new contract? A. There is no specific source stated. The only reference here is that there have been these G-1447 facilities authorized, and that in Docket G-1447 the Commission authorized United to sell and deliver natural gas to Buyer as proposed in the application in that docket. But in this contract itself there is no specific reference to sources of gas except the one in which I mentioned that there was a provision whereby United said that if Mississippi's Monroe supplies continued to decrease, United would in effect pick up those, up to the extent of 60 million cubic feet a day.

You would have to go to the Docket to find out the source of the gas of this contract.

Q. Are you familiar with the source of the gas as specified in that Docket? A. Yes, I know what it was. It was gas that was to move through these facilities that Mr. Stockwell referred to, I think, as Line 129. At any rate, he referred to it as coming in from the Beaumont District and into the Northern Area, into the Shreveport and Monroe Divisions, or Districts, and gave it a number.

Q. Would that be gas generally in United's Southern

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Area? A. Yes. The source of that gas is from the Southern Area.

Q. I had just one or two other questions, Mr. Dougherty. You mentioned an increase in rate under the PL-3 schedule and the fact that it was under bond and a few other descriptions of it.

Prior to that increase, what was the rate under the PL-3 Schedule? A. There was no PL-3 Schedule prior to its filing, which contains the 65 cent demand and 9 cent commodity rate. But in the Rate Schedule, which was Supplement No. 15 as amended by Supplement No. 1 to Supplement No. 15 to FPC Rate Schedules 9, 10, and 11, the basic rate was 47 cents per Mcf of billing demand per month.

The commodity charge was 6½ cents, and then there was this provision in the Supplement 1 to Supplement 15 for some adjustment under certain circumstances.

Q. In those contracts up to that time, was there any provisions respecting any minimum take? A. No, in none of the contracts which I have referred to as Rate Schedules 9, 10 and 11, and Supplements thereto, there was no minimum quantity required to be taken. There was a minimum bill which was the demand charge, but no minimum quantity.

Q. Are you familiar with the proposal in this situation



on this 75 cents and 10 cents respecting a minimum? A. Well, as I read the proposed tariff, which Mr. Crosby testified to, there would be a 72 percent minimum requirement of take-or-pay-for on all of the gas which would be taken under both these contract situations.

Q. That would constitute a variation from your contract existing respecting the old contract? A. Yes, it is a variation from that and it is a variation from the Schedule PL-3 and the general terms and conditions relating thereto.

Q. Just to have it in the record, what was the nature of the contract price for gas under the new contracts? A. As stated in the contract, it is a dollar and 30 cents per Mcf per month, as a demand charge, and the commodity charge is 12½ cents per Mcf. There is a minimum bill stated, the sum of the monthly demand charged, plus multiplying the commodity charge of 12½ cents by the annual minimum requirements.

Then there was a further provision for repricing by the parties during each succeeding five-year period.

Q. Mr. Dougherty, you mentioned that the new contract was United's Rate Schedule FPC No. 115. A. Right.

Q. And you testified about the Precedent Agreement. Do you know whether or not that is on file in the Commission's

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files? A. I do not know whether the Precedent Agreement is a part of the schedule. I would doubt it. I have no information on that.

Q. The final contract then you said was incorporated in United's Rate Schedule. Could you give me the official reference to that? A. When the contract was executed, United filed that contract as a rate schedule, which is the one I mentioned, FPC 115, just as these others were, FPC 9, 10 and 11, you can see a number of things had been filed in the interim and this was 115.

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Q. Do you know of your own personal knowledge otherwise whether present customers of United or the predecessors in interest of either party—that is, the customers or the seller—entered into gas purchase contracts relating to the Monroe field? A. When you say "other customers," I don't know what particular companies you have in mind, sir, but I do know

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that because of my familiarity with the contracts out of the Monroe field, not only with Mississippi as a purchaser but with Interstate Natural Gas as a seller, that there were contracts by United Gas Pipe Line Company and the other producers in the Monroe field, with the Memphis Natural Gas Company and with Southern Natural Gas Company. That is, made in the early days for a supply from the Monroe field.

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**E. P. Kramer**

was called as a witness, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Horning:

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Q. Would you describe briefly the system of the Mississippi River Fuel Corporation in its distribution of the gas when it purchases it from your various sources of supply? A. Those three sources, counting the West Line sources as a group—although they are many separate contracts—those volumes are moved northward from our Perryville Station and the bulk of the gas is sold in the St. Louis area, both on the Missouri side and the Illinois side of the river.

Q. And to what categories of customers is it sold? A. A large volume is sold to what is commonly termed direct sales to large industry, which would include such companies as cement plants, steel plants, gas plants, lime plants, an aluminum ore company, and similar large industries, for the direct sales, some of which is sold on a firm basis, but the largest volume is sold on an interruptible basis due to the fact that the most of our on peak winter days are made to the public utilities for resale to home users for house heating and cooking and water heating and also to commerce and some industrial customers.

The largest part of that demand, I would say, is for comfort heating in the homes of the people in the St. Louis area, and of course some towns down along the line. But the bulk of it is in the St. Louis area.

Q. Through how many piplines does the gas move from

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Perryville to the St. Louis area. A. Two lines.

Q. Does Mississippi have any problem with respect to these direct sales—any unusual circumstances compared to other transmission companies? A. I believe it would probably be more correct to say that our problem is with the firm sales, because of what is commonly termed their poor load factor, due primarily to this heading load. That necessitates and urges us to sell to large industries on an interruptible basis so that we will be in a position, and we do, during the times when the residential customers are not using the gas for heating, we are able to deliver that gas, use our facilities and use up as much of our purchased gas as is needed to serve those interruptible loads to try to fill in that terrific valley that develops as a result of the house heating load.

Q. Stated percentagewise, approximately how do the sales of Mississippi River Fuel Corporation compare, direct sales and sales to utilities? A. They are about half and half. That is, I am talking about on an annual basis, the volume is about half and half. On the peak winter days which only occur statistically or historically on the average about once every three years, most of it goes to the residential user.

Q. But on an annual basis, there is approximately—

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A. About half and half. I think right now the figure is probably just under 50 percent which goes to the interruptible customers.

Q. In the gas industry that is a rather unusual situation? A. Very unusual.

Q. Would you explain that to His Honor? A. I know of no other company that has the same ratio of direct sales on an interruptible basis to its total sales as large as

Mississippi finds it necessary to sell. Other pipeline companies have less and substantially less, of such sales than we do.

Q. Stated percentagewise? A. Percentagewise, I don't know of one right at the moment that approaches it unless it might possibly be such a company as Alabama-Tennessee down in the North Misisssippi and Northwest Alabama area. They may have substantially the same in percentage, but not in total volume.

Q. Is it fair to say that the maintenance of this interruptible industrial load is vital to your company's well-being and continued prosperity? A. Very vital.

Q. Would you tell his Honor how, in taking the gas that you take from these sources, you spread it for its different uses?



A. You mean from a supply standpoint?

Q. Yes, sir. A. In the winter months most of the gas that we purchase is going indirectly to the home user through the utility customers we have. As those peak winter days drop away due to warmer weather, we offset that drop to as great an extent as we are able to in our sales efforts by the sale of interruptible gas.

Q. What is the reason for that, sir? A. There are several reasons. One is that we have facilities capable of delivering the amount of gas that is needed by our residential users, our indirect residential users, and we are able to utilize those facilities in a way that in gas terms, just to improve the load factor.

Mr. Da Pra: May I break in there, Mr. Horning?

Mr. Horning: Yes, sir.

Mr. Da Pra: Would you give us what the sales capacity of Mississippi is?

(818)

The Witness: We rate it at 450 million, but we have been able to exceed that somewhat—that is 450 million cubic feet per day.

Mr. Da Pra: Do you know how much you have exceeded that?

The Witness: We did, I believe, on one day get over 490

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million.

Mr. Da Pra: Thank you, Mr. Kramer.

By Mr. Horning:

Q. Then I take it from what you have said that this winter peak by the household consumer and the customers of the utilities to whom you sell, is that a high load factor or is that a low load factor gas? A. That we sell to the utilities for resale?

Q. During the wintertime. A. During the winter that is a very low load factor gas, and with that increased utilization of our facilities, our resale customers benefit. In the determination of rate levels, the Federal Power Commission in determining costs make allocation between what they call the demand component and the commodity component.

Some of that commodity component is made up of purchased gas. A considerable amount of it is made up of other costs, returned income tax, and some of the operating expenses and the like, with the result that they develop a component which we call a commodify component.

It comes out in total dollars. When they determine what the amount of revenue which should come from the resale business is, they divide those total dollars by the total Mcf delivered by the company and arrive at a price. That then becomes, through their calculations, the commodity price

at which the gas is sold to our utility customers in our tariff.

Mr. Da Pra: What question is this in response to?

Mr. Horning: This is leading up to the next question that I am going to put to him.

Mr. Da Pra: What was the last question?

(Question read.)

Mr. Da Pra: Is that all of that answer to that question?

Presiding Examiner: I gather that the witness is anticipating.

The Witness: I think he asked a question prior to that, and I took it that he was interrupting to inquire about the load factor. The previous question I don't believe was fully answered.

Presiding Examiner: You mean this was in response to a question that Mr. Da Pra asked?

Mr. Da Pra: What is the question previous to that?

(Question read.)

By Mr. Horning:

Q. I will put this question to you then, just to bring it to a head.

Is the commodity charge which you pay in your two-part rate for purchases from your suppliers of importance to Mississippi River Fuel Corporation? A. Very important.

Q. Would you explain to his Honor the elements which



make that commodity rate so important to you? A. We sell this interruptible gas in competition with other fuels. It is important that we sell the interruptible gas at a profit. To the extent that the commodity level of our purchases increases, our ability to is adversely affected.

(821)

Q. And how does any rise in the commodity portion of your two-part rate adversely affect Mississippi? A. I thought I had answered it. I tried to say that it adversely affects our ability to compete.

Q. Does that apply particularly to this industrial business that you told us about? A. Yes, it does.

Q. For what reasons? A. For the reason that the level of competitive fuels, the price level of competive fuels, is such that the only way we can sell it is to be in a position to meet that competition.

Q. Could you explain to us how this industrial load which Mississippi has built up affects the prices to resale customers? A. Primarily because in the determination of our rates in our tariff for sales to the resale customers, the level of those rates is determined by the calculation that I mentioned a while ago, where the larger the total volume of

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Mcf sales is, the smaller the unit commodity charge is. That is where it affects the resale customers.

Q. If by reason of an increase in the commodity rate Mississippi River Fuel Corporation should lost industrial business, what effect does that have on the rates which must be charged to other customers? A. It would cause them to go up as a result of the fact that we divide the total dollars by a smaller volume.

Q. Of the total industrial load which is presently attached to the system, what percentage approximately thereof is boiler fuel? A. Of the total load?

Q. Yes, of the total industrial sales, approximately how much, if you can tell us percentagewise, is for use as boiler fuel? A. On an annual basis, I would say that the sales to boiler fuel users is about 30 percent.

Q. Is that or is that not competitive? A. Oh, yes, it is

competitive today or we wouldn't be able to sell that volume.

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830

By Mr. Horning:

Q. You have referred to a minimum take-or-pay of 72 percent under the PL-2 contract. Is that correct? A. The new contract, that's right.

Q. And when you were explaining that you took 72 percent of the gas thereunder, what did you mean by that? A. 72 percent of the annual quantity which the contract would have made available, or to go into detail, if the contract is 150 million, 72 percent of that would be 108 million average per day, varying on peak days maybe as much as 150 million and on other days, quite low.

Q. Your so-called PL-3 contract, I think you said that contains no such minimum take-or-pay-for provision? A. That is correct.

Q. Under the proposed rate in this case of the 75 and ten cents, there is a provision for a minimum 72 percent take or pay. What would be the effect of that sort of a provision on Mississippi River Fuel? A. It could have a very adverse effect. Perhaps today it wouldn't since we are using of the old contract in excess of 72 percent, but we could very well be hurt by it and our customers of course hurt by it if in a depressed business condition or a bad competitive position we were unable to sell as much gas as would be required to keep that old contract at 72 percent if this 75 and 10 cent contract was

831

to prevail.

Q. It is also proposed in this 75 and 10 cent for a rolled-in rate and to abolish your present two-rate schedules,

(831)

PL-2 and PL-3. Mississippi opposes that. Could you tell his Honor generally the basis upon which you oppose that principle of a rolled-in rate? A. Largely because of its potential adverse effect on our sales and our customers, ~~our tariff~~ to our sales customers. ~~It is a condition~~ that, unless you have our company problem, if you people realize. When I heard about this thing from Mr. Manley over the telephone, I almost fell out of the chair when I found out that ~~that was~~ what was being proposed ~~by these guys up~~ here when they were kind of getting together and were going to say "Here, we will cut this pie up, and this is Mississippi's slice of it."

Presiding Examiner: I don't think that is quite responsive to the question that was put to you.

Mr. Horning: What I want to know is the effects, the reasons why, what is the peculiar effect on your company of a rolled-in rate?

A. The reason I was concerned about it was that it could adversely affect our interruptible business, and that is a very important part of our picture.

Presiding Examiner: Let me ask you this. You say it could. It seems rather vague, "it could." Anything could.

832

Could you be more specific?

The Witness: If the rolled-in rate in terms of a minimum take were to prevail and our industrial business fell off, not because of price but simply because our interruptible customers didn't need any fuel—we will say that they themselves lost business and had no need for fuel, or a minimum need for fuel.

Presiding Examiner: Do you contemplate any such development in the near future?

The Witness: I can't say.

Presiding Examiner: Or a reasonable probability. You are in charge of sales.

The Witness: Last year I thought it was and it didn't materialize. This year I feel pretty optimistic for this year.

Presiding Examiner: So that possibility or probability isn't very reasonable, is it?

The Witness: It isn't reasonable today but this is a long term thing.

Presiding Examiner: But rates are not forever.

The Witness: They seem to be when you don't want them.

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**834**

**Felix Joseph Martin**

was called as a witness, having been first duly sworn, was examined and testified as follows:

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**850**

Direct Examination

By Mr. Horning:

Q. Would you state your full name, please, sir? A. Felix Joseph Martin.

Mr. Fletcher: What was the name of the witness?

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Mr. Horning: Felix J. Martin.

By Mr. Horning:

Q. What is your address, Mr. Martin? A. 1415 Rankin Drive, St. Louis 17, Missouri.

Q. What is your occupation? A. I am General Superintendent for Mississippi River Fuel Corporation.

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856

Q. Would you explain how the gas from the 20-inch line in the operation of your system is handled at this [Perryville] Station? A. The gas delivered by the 20-inch line into the 26-inch inlet header is fed through 1, 2 or 3 of the tubes—Tubes Nos. 1, 2, 3—depending on the load into our discharge headers.

858

Q. Would you tell the method of operation for the gas which you take out of the other line, this 26-inch line? How is that handled in practice at the Station? A. Normally the gas from the 26-inch line is measured through tubes No. 6 and 7, and is fed into the discharge header which in turn is connected to our No. 2 Line.

Q. And then that goes into the No. 2 Line which is the top line on the plat? A. Correct.

Q. Did you say that that gas was compressed in that line? A. Compressed, yes, sir.

Q. And then travels on its way to St. Louis? A. That's right.

Q. Is there any co-mingling of the gases from these two sources—that is, from the 26-inch line and the 20-inch line—of United Gas Pipe Line?

859

A. No, sir, except that period of time when there was an adjustment in the facilities of both United and Mississippi. After the adjustments were made the gas is metered separately. If there is any necessity of using additional runs than the ones that are normally used—the three 20-inch and the two 26, tubes No. 4 and 5 are placed in operation on whichever line it is required to have additional meters. But the gas is not co-mingled.

Q. Even in tubes 4 and 5 is there any co-mingling of the gases from those two sources? A. No, sir.

Q. Would it be correct to say that tubes 4 and 5 are simply emergency tubes or tubes that are to be used other than in normal operation when some unusual situation requires their use? A. I can't truthfully say that. They were put in there as a bypass which has been omitted by mutual consent between the two companies. But they are also there for if the load is of such magnitude that it is too much for the normal tubes, they can be placed in operation on either one of the lines.

Q. In the normal operation, then, do I understand it correctly that you would use tubes Nos. 1, 2 and 3 and tubes 6 and 7? A. Correct, sir.



Q. And the others, 4 and 5, are spare tubes that are to be used in some such situation? A. That's right.

Q. Would you point out on this plat where are the metering facilities in the different tubes? A. Really the metering facilities constitute the whole tube; but the location of the orifice plates are right above the little triangles that have the numbers 6 on tubes 1, 2 and 3. If you go right across there, the symbols that are indicated there show the location of the orifice flanges which for the lack of a better name I call the guts of the meter.

Q. Is that the point at which meter charts are taken? A. No. The meter gauges themselves are in a separate building and the lines are extended from the orifice flanges to the gauges. It is not shown on here.

Q. The gas which comes from United's 20-inch line: Is that metered separately from the gas which comes from the 26-inch line? A. Definitely.

Q. Do you know whether that is separately billed, or is that within your knowledge? A. I am not qualified to answer that.

(860)

Q. But it is a fact that all of the gas which comes in from the 26-inch line is metered? A. I can say that it is metered and calculated separately

861

because the calculation comes under my jurisdiction. And when the figures go to the accounting department, each tube is kept separaately and designated from which line the gas came from, either PL No. 2 or PL No. 3. That is how the records go to the office for billing.

Q. Could you tell us here which is the PL-2 gas and which is the PL-3 gas as portrayed on Exhibit No. 95 for identification? A. The PL-3, the way we call it, is the gas that is delivered through the 20-inch line; and the PL-2 is the gas delivered through the 26-inch line.

Q. And the PL-3 gas, then, is that which goes through tubes Nos. 1, 2 and 3 on this plant. Is that correct? A. Correct.

Q. And the PL-2 gas goes through Nos. 6 and 7, in normal operation? A. In normal operati that's right.

Q. With these two in here as spares, 4 and 5. Is there any difference in Btu content of the two gases from these two sources as it comes through this metering station? A. We have to take occasional readings to determine the Btu of the gas because we have a problem of blending the gas in the two pipelines so that it comes to St. Louis with the same characteristics. It is done sometimes frequently, but it is normally done twice a month. Consistently the gas that is

862

delivered through the 26-inch line has a higher heating value than the gas that is transported through the 20-inch.

Q. Is there any difference in any other characteristics of the gases from the two different sources? A. We don't make those tests that I am able to answer that. It is indicative that the pressures are not the same, but since

they have gone through orifice plates you couldn't positively say that the pressures are not identical.

Q. But there is a difference in the pressure? A. There is a difference in the pressure.

Mr. Horning: Would your Honor indulge me a moment?

Presiding Examiner: Oh, yes, indeed.

By Mr. Horning:

Q. You just mentioned blending the gases from these two different sources to get it up there to St. Louis. Where is tht done? A. That is done a half a mile away from that, because it is the blending not only of the gas that comes from United but it is the blending of the gas that comes from the west line.

Q. What do you mean by the West Line? A. The line that extends from East Texas to our Perryville Station, where we gather gas of different characteristics and when it reaches Perryville and starts on its way north to St. Louis it has to start off with the same characteristics because we deliver that gas on the same basis in St. Louis.

**863**

So recording calorimeters are installed on each line and the dispatchers keep a constant watch and feed gas from the various sources to keep the Btu content the same.

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**870**

**Excerpts From Transcript of Hearing Held December 15, 1954**
**C. J. Maurer**

was called as a witness, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Horning:

Q. Would you state your full name, please, sir? A. C. J. Maurer.

(870)

Q. And your address? A. 407 North 8th Street, St. Louis, Missouri.

Q. What is your occupation? A. I am Assistant Treasurer and Assistant Secretary of Mississippi River Fuel Corporation.

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Q. Are you familiar with the system of billings and payments by Mississippi River Fuel Corporation to United Gas Pipe Line Company for purchases of gas under the two-rate schedules, PL-2 and PL-3? A. Yes, I am.

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Q. Is this the situation, then, that the meter charts are read, United prepares the billing, and then submits it to you for the gas which goes through these different runs that you describe separately under the two rate schedules which are involved? A. It goes through each meter run separately, yes, and each meter run has a separate meter chart on it. The meter charts that are taken off of what they refer to as S-57 meters is billed as PL-3 gas, and the S-90 series of meters is billed as PL-2 gas.

Q. Do the denominations for the gas have anything whatever to do with the billing? A. No, sir. The billings are based upon the actual deliveries through these meters.

Q. I think you said United gives you the billing and you pay for it on that basis. Is that correct? A. We check the billings, yes, sir.

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Q. Would you direct your attention, please, sir, to Exhibit No. 79 in the column headed "Revenues at Trial

Rates" on the line entitled "By Customers Mississippi River Fuel Code." A. Yes, sir.

Q. There is a calculation under PL-2 (Monroe) of $5,336,453, and one on the line entitled "PL-3 (Monroe)" of $9,218,525, or a total of $14,554,978.

How does your total figure compare with that total figure in Exhibit 79? A. I would say that it is very close. To design rates for these two rate schedules, it comes out almost identical to that.

Q. Have you made some calculations at my request of rate schedules which could be enacted, maintaining the PL-2 and the PL-3 rate schedules presently existing, and produce in revenues to United while maintaining the 75 and 10 proposal so far as its other customers are concerned, and still produce the amount which is shown on Staff exhibit No. 79 as the estimated revenue to United from Mississippi?

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A. Yes, I have.

If a nine cent commodity and a 75 cent demand on the PL-3 portion of this gas is used, the revenues produced are very close to the cost of service that I have developed here for these two deliveries.

In addition to that, the total revenues produced are I believe within ten thousand dollars of the revenues produced which you have referred to on Exhibit 79.

Q. You have mentioned now the PL-2 portion. Would that be the one that is demonstrated by Exhibit No. 96 for identification? A. That's right.

Q. So if we apply to Exhibit No. 96 for identification a demand rate of a dollar and 15 cents and a commodity rate of 10 cents, you would realize—that is, United would realize in revenues the sum of approximately $6,118,387 shown on that exhibit. A. That is approximately it, yes, sir.

Q. Similarly, if on Exhibit No. 97 for identification a

demand rate of 75 cents and a commodity rate of nine cents were applied to the PL-3 rate schedule, it would produce approximately the $8,531,459 shown on that exhibit. A. That's right.

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Q. Are you familiar, Mr. Maurer, with the contracts of Mississippi Rive Fuel Corporation with its interruptible industrial customers? A. Yes, I am.

Q. For what period of time, if any, are those contracts normally or usually made? A. Normally they are made for a term of a year, with a 90 day cancellation period on the end by any party. Under lots of contracts we are running over on the extension portion of the contract. But normally when they are made, they are made for either a year or two years at the most.

Q. Are those negotiated contracts? A. Yes, sir.

Q. Have you had occasion recently, due to competitive situations, to reduce any such contracts, the prices to be paid for sales of interruptible gas? A. Yes, we have.

Q. How long ago was that?

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A. The contract was negotiated in April, and the decrease under the contract has gone into effect within the last three or four months.

Presiding Examiner: April 1954?

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**Excerpts from Transcript of Hearing Held December 16, 1954**

**C. J. Maurer**

was recalled as a witness, having been previously duly sworn, was examined and testified further as follows:

Cross-examination

By Mr. Da Pra

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Q. Turning now to your Exhibits 96, 97 and 98, Mr. Maurer, primarily is it a fair statement to say that you have selected certain figures which appear in Exhibit 78-A, and the volumes for the most part which appear in Exhibit 78, as well as 78-A? A. I think that is generally right, yes.

Q. You have also used some volume figures which are not included in those two exhibits? A. That is right. I believe I testified that I used one from the transcript and another one from Exhibit

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By Mr. Da Pra:

Q. Now, on Sheet 3, Exhibit 96, Mr. Maurer, you purport to show the cost of transporting gas through the G-1447 facilities, do you not? A. Yes, sir.

Q. You make that allocation on a demand-mile and a commodity-mile basis, do you not? A. Yes, sir.

Q. And I take it what you were attempting to do, here on Sheet 3, was to arrive at a cost of service in the Central Rate Zone for the G-1447 facility, were you not? A. At least that part of them which is reflected by this line L-29 that goes 169 miles to Perryville.

Q. That portion is a portion of the G-1447 facilities.

Now, in attempting to establish that cost-of-service, were you able to—did you make any investigation to

(930)

determine the true cost of that 169 mile facility? A. Mr. Da Pra, we have tried to do that and I believe in my direct testimony yesterday I pointed out that we were trying to elicit that information from the staff and Mr. Epperson finally testified on the stand that there was no way of getting it from the working papers.

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Q. Isn't the ultimate effect of your computation here, Mr. Maurer, brought about by applying the units of average cost, rather than units of a particular cost? Doesn't that minimize the cost of service to Mississippi? A. I can't follow your logic in that statement.

Mr. Da Pra: Read the question back, will you?

(The question was read.)

By Mr. Da Pra:

Q. Is your answer the same? A. No, I can't quite follow how that would come about. It is one thing that we would have liked to have done that if we could, and I believe it has been stated before, we would have liked to separate out these G-1447 facilities if we could, but the information hasn't been available.

Q. What you would have liked to have done was to make a study of the specific property involved in G-1447 facilities in the Central Rate Zone, would you not?

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A. That is right.

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Q. Mr. Maurer, you have testified—and as I understand the build-up of your Exhibit 96, you have taken, up to the Shreveport and Monroe Districts, the average of all

costs relating to the G-1447 facilities that you have—in the—as shown in the staff's exhibit, which is based, is it not, on an average basis, is it not? A. That is correct.

Q. So that you have taken average costs up to a particular portion? A. That is correct, because I wasn't able to separate them.

Q. That is right.

Now, on Sheet 3, by use of average unit costs you have determined a transmission cost for a certain length of pipe in that area, have you not? A. Yes, sir. My purpose in that was, I am trying to separate this facility out as much as possible.

Now, you have 169 miles of this line, you know, in the northern area, but the staff in the southern area, although the gas goes some 350 miles, which is probably 3 or 4 times the average haul in the southern area, is just an average of things. I can't get behind that. If I could, I

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would like to.

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Q. Because you could not get the specific property in the central rate zone, you then had to apply these average costs, did you not? A. That is what I did, yes, sir.

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Q. You believe it appropriate, then, to apply average unit costs in determining a cost of service for a higher priced facility than others?

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The Witness: In the absence of specific costs I would be forced to use average costs and that is what I have done.

Presiding Examiner: I don't think you have answered the question.

Would you please read the question back to Mr. Maurer.

(The question was read.)

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The Witness: In this particular instance I believe that it would not be entirely appropriate but in view of the fact we could not obtain this other information we requested, it was the only alternative which I had.

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Q. As I understand your testimony to date it is that you do not have specific costs for the specific property that you are dealing with and that if you had known these specific costs, you would have come up with a higher

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figure than you came up with here.

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The Witness: In this particular instance, Mr. Da Pra, if you had the specific cost of the G-1447 facilities, I am not sure—and I can't be unless I have them—that the answer would be higher or lower than what I actually came up with. The reason for that, is this, that in Exhibit 78-A, Sheet 11, you will notice that the average haul there, in the central rate zone is something like 117 miles.

Now, the haul on this particular line is 169 miles, so by applying these units I have necessarily come up with a higher cost of service allocated to that facility in the

945

central rate zone, than if I had just taken an average of all transmission costs, so that actually the costs that are assigned to these G-1447 facilities are higher than the

average because the lengths of the line are longer. When you deduct 169 from an average of 110, it will reduce the average cost of the gas transported for all other people, maybe 10 miles or so. So in this particular instance, if you have the specific cost of the G-1447 facilities in the northern area, I believe—and I can't prove this unless I have it—that they would come up somewhere close to the result that I have arrived at on page 3 of Exhibit 96.

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Q. In computing the cost of gas transported through 1447 facilities from the Beaumont District line as shown at Sheet 2, Exhibit 96, you used the unit cost developed from Exhibit 78, which is shown on a commodity demand basis, did you not? A. Yes, sir. I believe you are referring to Sheet 2 of Exhibit 96?

Q. Yes. A. Yes, sir.

Q. That is a portion of the total cost of the G-1447

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facilities as you developed them in this exhibit? A. Yes, sir.

Q. With respect to the remainder of the costs relating to the central rate zone, you computed that on a demand mile and commodity mile basis, did you not? A. Yes, sir.

Q. What is the reason for not computing the entire cost on a demand mile and commodity mile basis, Mr. Maurer? A. Simply because we didn't have the information available. Mr. Stockwell testified that such a study was not available.

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Q. In determining your costs of the PL-3 gas, Mr. Maurer, you used a demand-commodity basis whereas in

developing your cost for the PL-2 you used a demand-mile and commodity-mile basis, did you not?

. . . . . .

The Witness: Both these methods on 2 and 3 split the cost between demand and commodity. Now, the difference is

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in PL-3 I have used the average cost. I have not used a demand-commodity mile method on PL-3, whereas in PL-2, since the figures were available for cost of transmission without compression, I was able to get those figures out.

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**951**

Q. In arriving at a total cost which you call the G-1447 facility cost, did you not in determining the cost of transporting gas through G-1447 facilities to the Shreveport and Monroe District compute that on a demand-mile and commodity-mile basis? A. Yes, sir.

Q. Do you know whether the Shreveport and Monroe District are in the Central Rate Zone? A. Yes, sir.

Q. Now, on Exhibit 97, in arriving at your cost for the PL-3 gas, did you not use a demand and commodity basis? A. Yes, sir.

Q. And that includes costs, transmission costs in the Central Rate Zone, does it not? A. Yes.

Q. In computing that cost in the Central Rate Zone as shown on Exhibit 97, you gave no consideration to a computation of costs on the demand-mile and commodity mile basis, did you? A. Not in that particular exhibit.

Q. Do you know what the average mile haul in the Central Rate Zone is, Mr. Maurer? A. Yes. I think it is in this exhibit.

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Q. Is that the 114 miles you mentioned? A. The average commodity haul is 114.18 miles.

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Mr. Fletcher: Now, Mr. Examiner, the other day—and I assume the Examiner realizes it was deliberate—I adopted and reaffirmed for United Gas Pipe Line Company, offer of Exhibits 77 to 80, both inclusive, subject to the reservations which United had, and which in the Commission's Opinion No. 277 had been permitted. I did not at that time adopt the testimony which Staff offered in support of the exhibits, and I did that deliberately because frankly I wanted to hear it.

We are now down to where that testimony and the cross is in, and subject to the same reservations, United Gas Pipe Line Company would now like to adopt the testimony offered by Staff in support of Exhibits 77 to 80, both inclusive.

Presiding Examiner: Very well.

Is there anything else you have to offer at this time?

Mr. Fletcher: That is all from United Gas Pipe Line.

Mr. McAllister: You said you would like to adopt it. You do adopt it, do you know?

Mr. Fletcher: I said I did. If I didn't say "did," let the record show "did." Or "do." "d-o," that is, Mr. Examiner.

Presiding Examiner: Very well.

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1061

**Excerpts from Transcript of Hearing Held January 17 and 18, 1955**

**Charles C. Barnett**

was called as a witness, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dougherty:

Q. Will you please state your name? A. Charles C. Barnett. My residence is Shreveport, La.

Q. And what is your position with United Gas Pipe Line Company? A. I am an engineer in the Gas Supply Department.

Q. You are the Charles C. Barnett that testified the beginning of the hearings in these proceedings back in March, 1953? A. Yes, sir.

Q. And did give testimony about various gas purchase contracts? A. Right, sir.

Q. What is your position with respect to the gas purchase

1062

contracts and gas supply of the United Gas Pipe Line Company? A. Simply this: To negotiate for the purchase of new gas, keep our old contracts amended, and generally police our gas purchase contracts.

Q. How long have you had charge of that work? A. I have been doing that since late 1945.

Q. So you are the official of the United Gas Pipe Line Company who would know the matter in effect of the gas purchase contracts and negotiations engaged in in respect of them? A. Of course, I am not an official of United Gas Pipe Line Company. I am an engineer. I am generally familiar with all of the negotiations, some of which may

have been carried on by other officials of United Gas Pipe Line Company. But, generally, they come back to me to take care of.

Q. You are the employee of the company whose responsibility is to keep all of— A. That is my primary job, yes.

Q. Mr. Barnett, the subpoena which has been issued in this case describes the gas purchase contracts which were to be brought in as being those between United Gas Pipe Line Company and Union Producing Company for United Gas Pipe Line Company's Monroe, Shreveport, Dallas, Beaumont, San Antonio, Houston, and Southwest Louisiana districts, effective in 1950, and all agreements amendatory thereof, from January 1, 1951, to the date hereof.

1063

Have you with you this morning such contracts? A. Yes, sir.

Q. Are the words describing these districts which I have read to you ones that you do use in your actual operation of your gas supply contracts? A. Yes, sir.

Q. The reason I ask that is I notice in some of your testimony you talk about zones; that is your earlier testimony. And I just wanted to get it clear, so I would be asking questions with respect to your own organization of your contracts which corresponds with the way you actually do it. A. The contracts are made and kept by the districts. The zones to which you referred to here are zones which we had arbitrarily set up in areas which may have not had any relationship to our districts, so we could compare the prices in that particular area of South Texas, North Louisiana, and North Texas, but there is no relationship between the zones in the testimony and the districts.

Q. Then we can direct our questions and answers to districts as carried by you? A. If you like; yes, sir.

Q. Now, the exhibits which relate to some of the cost figures in this case have used a description of "Northern Area" and "Southern Area." Are you familiar with the use of those terms?

1064

A. Generally; yes, sir. I may need some help on them to be sure that I am talking along the same lines that you are talking along.

Q. When we talk about the Northern Area, and relating that area to the districts for your gas purchase contracts, we have thought of those as being Monroe, Shreveport, Dallas Districts? A. That is right.

Q. And then the Southern Area would be those that contain the Beaumont, San Antonio, and Southwest Louisiana Districts? A. Partly, yes.

Mr. McAllister: Mr. Examiner, may we have a little clarification there of the aspect of this case? Are you talking about the location of the fields, now, or what, or is this witness undertaking to interpret the testimony of other witnesses?

The Witness: No, sir; not in the least. I am just trying to be sure I understand what he is driving at.

Mr. McAllister: Well, I want to be sure that what I understand to be your understanding is what is the state of the record.

The Witness: I do not know.

Mr. Fletcher: Mr. Examiner, wouldn't we get forward better and avoid this difficulty, the subpoena is directed to certain districts. Now, whether those districts be Northern Area

1065

or Southern Area becomes immaterial because the subpoena is directed to those districts, and the subpoena to this witness was with respect to price and any change in price, and it seems to me that he can go forward on that basis.

Presiding Examiner: Well, as I understand this question, it is preliminary to certain other questions which Mr. Dougherty wishes to put to the witness, and I believe he wants to establish some common ground of understanding.

Mr. Dougherty: That is all it was.

Mr. McAllister: Can you make reference to some exhibits so we will know just what you are tying to, and the witness will know just what you are tying to? It is merely to avoid a confusion on the record. Now, that is all.

Presiding Examiner: Well, so far I do not think the record is confused at all. If we get to the point where there is some confusion perhaps we can take the matter up again.

Mr. Dougherty: There were maps which did carry the designations "Northern Area" and "Southern Area."

Mr. Fletcher: Not any maps in this record, Mr. Dougherty.

Mr. McAllister: Take Exhibit 82, is that what you are driving at?

Mr. Dougherty: I do not know.

Presiding Examiner: It is not a map.

Mr. McAllister: No. 82 is not a map, but if we are talk-

1066

ing about some of these districts here that are shown—

Presiding Examiner: There was a map which was in the record.

Mr. McAllister: I know that. But I am directing

attention to Exhibit 82 now to see if we can get it straight from that.

Mr. Dougherty: Yes, that is right, Mr. McAllister.

Mr. McAllister: You did not include all that were in the various areas?

The Witness: He did not ask me all that was in the various areas.

Mr. McAllister: I know, but will you take a look at that so you will be generally familiar with it?

Mr. Dougherty: The subpoena did not request all of the districts.

Mr. McAllister: I know that. But when you are saying what is the Northern and what is the Southern under some concept—

Mr. Dougherty: Well, what I am interested in only is when we talk about the districts which we have named in our subpoenas as Monroe, Shreveport, and Dallas, that we are speaking of those as districts in the Northern Area, not all of the districts in the Northern Area but—

Mr. McAllister: Not all, but part of them.

The Witness: That is what I was trying to answer.

Mr. Dougherty: I thought Mr. Barnett understood.

**1067**

Then the others are in the Southern Area, Beaumont, San Antonio, Houston and Southwest Louisiana.

Mr. McAllister: As shown in Exhibit 82.

Mr. Dougherty: Yes.

By Mr. Dougherty:

Q. Well, Mr. Barnett, could we start with the Monroe District and follow with the Shreveport, and then the Dallas District with respect to these contracts? A. Yes.

Q. Well, I would like to have you identify them as you know them by field or contract identification, or such other method as you use to identify them. So would you

please produce now the contracts called for by the subpoena related to the Monroe District?

Mr. McAllister: If this is asking for physical production, I have no objection to it.

Presiding Examiner: That is all he has asked for at the moment. He just asked him to produce certain contracts.

Mr. McAllister: He asked him to identify them.

Presiding Examiner: He asked him to produce them. That was the first thing.

Now, he asks him to identify them. Now, I assume he means by that to say what they are.

Mr. Dougherty: I thought this, Mr. Examiner, to try to save time, if the witness could assemble in one group the con-



tracts that relate to the Monroe District, and have those identified by number as they carry them in their own records, and by fields, it would keep the matter of these contracts clear and we would then know what field is involved, and what contract is involved in that particular field within that district.

Presiding Examiner: All right.

Mr. Dougherty: Mr. Barnett is the one familiar with them.

Presiding Examiner: Well, I assume there is some method of keeping records of the contracts, and I assume what you want the witness to do is to state what contracts he has before him at the moment, and to describe how he keeps these contracts, and if they have numbers to state what the numbers are, and then I assume you will want these identified in some way in the record as an exhibit number?

Mr. Dougherty: Yes, we will eventually.

It seems to me since we have not seen them after we do have them produced pursuant to the subpoena, and even

before they are given exhibit numbers, that we could have a recess for such period of time as we could examine them, and then we could go forward with our testimony—I mean only a half a day at most—with a great deal more speed than we could if we had to do it piecemeal here?

Presiding Examiner: Well, suppose we go along and see how far we can get, and then at the time we will see.

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Mr. Dougherty: Yes, because in order to ask him intelligent questions with respect to the negotiation of these contracts I think it would help if we had a chance to examine them first.

Presiding Examiner: Very well.

Mr. McAllister: Mr. Examiner, I suggest that that examination be made now, because if it is thought that this witness is going to take up and read into the record the identification numbers and description of each one of these contracts without some showing of some purpose to be accomplished by it, I object. I object right now. He is producing these documents to them, and it is up to them to make their case from here on out, and I object to the impeding and the cluttering of the record with the procedure that has been indicated.

Presiding Examiner: I know that the witness producing these exhibits has them in covers of some sort. How many of them are there, Mr. Barnett, three or four?

Mr. Fletcher: Do you mean volumes, Mr. Examiner?

Presiding Examiner: Yes. How many volumes are there?

Mr. Fletcher: I have 11 volumes. I thought possibly they might be identified in that way, the 11 volumes which should not take too much time. I had no idea that the witness would be asked to identify separately each contract.

I doubt seriously that Mr. Dougherty has any such idea at the moment, at least.

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I think you are a little bit too worried about this situation, Mr. McAllister. I am going to wait until the time comes. Of course, you know we are going to try to expedite this hearing and have it concluded as promptly as possible, and I am sure that all counsel will be glad to try to achieve a prompt conclusion of this matter.

By Mr. Dougherty:

Q. Mr. Barnett, with respect to the Monroe District, is that district divided into fields, as far as your contracts are concerned? A. Yes, sir.

Q. Can you name those fields? A. Monroe Field, Floyd Field, Lisbon Field.

Q. Now, do you have in the compilation of contracts for the Monroe District the contracts for those specified fields separate, with respect to each field? A. Yes, sir.

Q. And may I look at these? A. Yes.

Q. Mr. Barnett, you have handed to me this compilation of contracts, one volume of which is for the Monroe District, and has within it—you have said Floyd and Monroe Fields. Now, is that compilation all of the contracts requested for the Monroe District, so far as these two fields are concerned? A. Well, if you put this one with it you will have them

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all.

Presiding Examiner: Mr. Dougherty, may I say the record will be rather obscure when you say "this volume," and "that volume," because there will be nothing in the record to show to what your reference is made. Perhaps the thing to do might be to identify these immediately, and

then after you identify them reference can be made so that when the record is read it will be clear.

Mr. Dougherty: Well, there is one volume, then, Mr. Examiner, that has the title "United Gas Pipe Line Company Gas Purchase Contracts with Union Producing Company in effect 1950, As Supplemented and Amended, Monroe District."

Presiding Examiner: Wait a minute. Excuse me, sir. Would you like that identified in the record as Exhibit 100, for identification?

Mr. Dougherty: Very well.

Presiding Examiner: That will be marked Exhibit 100, for identification.

(United Gas Pipe Line Company Gas Purchase Contracts with Union Producing Company, in effect 1950, as supplemented and amended, Monroe District, were marked Mississippi River Fuel Corporation Exhibit No. 100, for identification.)

Mr. Dougherty: There is also a volume containing the same title which has within it some Monroe Field and Lisbon Field contracts, and that would follow.

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Presiding Examiner: That we will have marked Exhibit 101, for identification.

(United Gas Pipe Line Company Gas Purchase Contracts with Union Producing Company, in effect 1950, as supplemented and amended, Monroe Field and Lisbon Field, were marked Mississippi River Fuel Corporation Exhibit No. 101, for identification.)

By Mr. Dougherty:

Q. Mr. Barnett, these documents that have been so marked, that is for identification as Exhibits 100 and 101,

contain, do they, the contracts requested by the subpoena for the fields within the Monroe district as kept by your company? A. Yes, sir.

Mr. Fletcher: Mr. Examiner, may I interrupt?

Mr. Dougherty is accurate as far as he goes, but they cover contracts with Union in those fields in the district.

Mr. Dougherty: I think I said requested in the subpoena.

Mr. Fletcher: Well, I misunderstood, then.

There may be other fields in the district, but this is only Union's contract.

Presiding Examiner: Well, those are the only ones required to be produced under the subpoena.

(There was a discussion off the record.)

By Mr. Dougherty:

Q. Now, Mr. Barnett, each individual contract, I note, contains a number. Is that the number as used for your own

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company purposes in your files? A. Yes, sir.

Q. And in future questions may they be used in asking points about the contracts? A. Yes, sir.

Q. Now, Mr. Barnett, with respect to the Shreveport District, will you produce the contracts that were requested by the subpoena for that district? A. Yes, sir.

Mr. Dougherty: Mr. Examiner, Mr. Barnett has handed to me five separate volumes, each of which contains the title on the cover sheet "United Gas Pipe Line Company, Gas Purchase Contracts with Union Producing Company in effect in 1950, as supplemented and amended, Shreveport District."

May we have each of those marked for identification?

Presiding Examiner: Yes, I think we might give a separate number to each one.

That will be Exhibits 102, 103, 104, 105, and 106.

(The five Volumes each entitled "United Gas Pipe Line Company, Gas Purchase Contracts with Union Producing Company in effect in 1950, as supplemented and amended. Shreveport District," were marked Mississippi River Fuel Corporation Exhibits Nos. 102, 103, 104, 105, and 106, for identification.)

By Mr. Dougherty:

Q. Mr. Barnett, these volumes of contracts that have been marked for identification as Exhibits 102 to 106, inclusive,



contain all of the contracts between United Gas Pipe Line Company and Union Producing Company for the Shreveport District as requested by the subpoena? A. Yes, sir.

Q. Are all of the fields in that district represented by contracts in these compilations? A. Yes, sir.

Q. And they are so identified both by fields and by your own file numbers? A. Yes, sir.

Q. Now, then, with respect to the Dalias District, would you produce those requested by the subpoena? A. Yes, sir.

Q. Mr. Barnett, you have handed me one volume of contracts which has the title "United Gas Pipe Line Company, Gas Purchase Contracts with Union Producing Company in Effect in 1950, as Supplemented and Amended, Dallas District."

Mr. Dougherty: Mr. Examiner, might we have that marked for identification?

Presiding Examiner: Yes, it will be marked Exhibit 107, for identification.

(The document entitled "United Gas Pipe Line Company, Gas Purchase Contracts with Union Producing Company in effect in 1950, as Supplemented and Amended,

Dallas District," was marked Mississippi River Fuel Corporation Exhibit No. 107, for

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identification.)

By Mr. Dougherty:

Q. Mr. Barnett, does the volume that has been marked for identification as Exhibit 107 contain all of the contracts that were requested by the subpoena for the Dallas District? A. Yes, sir.

Q. And that contains listings of the fields and contract numbers as the other volumes? A. Yes, sir.

Q. Now, then, with respect to Beaumont, would you produce the contracts requested by the subpoena for that district? Do you have those available, Mr. Barnett? A. We did not have a contract with Union in 1950 in the Beaumont district.

Q. And any contracts that you now have were new contracts made since that day? A. Since 1950; yes, sir.

Q. Now, with respect to the San Antonio District, will you produce those?

Presiding Examiner: Did we mark 108 for Beaumont?

Mr. Dougherty: No, his answer was there were no contracts with Union in 1950, so there are no such contracts.

Presiding Examiner: I see.

By Mr. Dougherty:

Q. Mr. Barnett, you have handed me two compilations of

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contracts which bear the title in each case "United Gas Pipe Line Company, Gas Purchase Contracts with Union Producing Company in effect in 1950, as supplemented and amended, San Antonio District."

Mr. Dougherty: If the Examiner please, there are two

of these. Might we have these marked for identification?

Presiding Examiner: Yes, they will be marked respectively Exhibits 108 and 109, for identification.

(The documents entitled "United Gas Pipe Line Company, Gas Purchase Contracts with Union Producing Company in Effect in 1950, as Supplemented and Amended, San Antonio District," were marked for identification as Mississippi River Fuel Corporation Exhibits Nos. 108 and 109.)

By Mr. Dougherty:

Q. Mr. Barnett, these two volumes that have been so marked for identification contain, do they, all contracts between the two companies in question as requested by the subpoena for the San Antonio District? A. Yes, sir.

Q. And they are identified by fields and your file numbers as in the case of the other contracts? A. Yes, sir.

Q. Then the next is the Houston District.

Mr. Dougherty: If the Examiner please, Mr. Barnett has handed me one volume of contracts which bear the title "United



Gas Pipe Line Company, Gas Purchase Contracts with Union Producing Company, in effect in 1950, as supplemented and amended, Houston District."

Might we have that marked for identification?

Presiding Examiner: Yes, it will be marked Exhibit 110, for identification.

(The Document entitled "United Gas Pipe Line Company, Gas Purchase Contracts with Union Producing Company, in effect in 1950, as Supplemented and Amended, Houston District," was marked Mississippi River Fuel Corporation Exhibit No. 110, for identification.)

By Mr. Dougherty:

Q. Mr. Barnett, does the volume which has been so marked for identification contain all of the contracts requested by the subpoena between the two companies for the Houston District? A. Yes, sir.

Q. And here also they are identified by fields and your file numbers as in the case of the other volumes? A. Yes, sir.

Q. Then the next is the Southwest Louisiana District. A. We have no contracts with Union Producing Company in the Southwest Louisiana District.

Q. That is either made in 1950 or since then? A. That is right.

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Q. Very well.

Mr. Dougherty: Mr. Examiner, I think in order, therefore, to expedite this matter that if we could have a recess for examination of these contracts we could then come back and have our questions much more explicit and direct and brief. I do not know how much work we can get done this morning. We probably could on some portion of it, and come back this afternoon.

There is, of course, quite a volume of contracts. I do not think we could go through all of them by then, so my request would be either to recess until this afternoon, and see what progress we have made by then, and ask what questions we can. It might be that we could keep things a little better separated that way, and then continue on as time permits after that.

. . . . . .

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Presiding Examiner: The hearing in the matter of United Gas Pipe Line Company, Docket No. G-1142, et al., will please come to order.

Mr. Dougherty, are you ready to proceed now, sir?

Mr. Dougherty: If the Examiner please, since the recess this morning there have been five of us here on our side examining these contracts. We have gotten through I should say about three-quarters of them. We have not gotten our material organized and catalogued as we would like to have, and I think it will serve the purpose of time saving if we are permitted to recess further until tomorrow morning. I am sure by that time we will have everything is such shape that we can go forward promptly with questions.

There is one thing that I would like to mention, and that is having to do with the preparation of copies of such of these documents as we would wish to have in the record. It is quite apparent from this present examination that a great deal of this material we would not wish to offer as exhibits. Some of the other documents where they have been marked, that is the whole volume has been marked for identification, there are a number of contracts that seem to be similar to others, in which event one set of contracts, or one contract and its amendments, I think would suffice for record purposes.

However, I presume that there are no other copies than this

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one set of photostats that Mr. Fletcher has delivered, so that we have a problem of what copies counsel for the staff would want at the time of our examination. If so, we will have to have those photostated here in Washington. If those are not desired at that time we can do it,

of course, later, and if it is permissible for us to use, say, a typical contract as representing one of many in the same field where the terms are, in fact, identical except as to the property covered, we think that might be done, and thereby eliminate the amount of detail that would have to be put into the record, so that those are the matters I would like to present for your consideration at this time.

Presiding Examiner: Well, would it be possible, Mr. Dougherty, for you to have a photo copy from the photo copies which you have before you, what I understand to be a limited number of documents which you wish to offer?

Mr. Dougherty: Yes, I think so. These are all negatives, and I think from these we can have copies made here in Washington.

Presiding Examiner: And do you think you might be able to have those by tomorrow?

Mr. Dougherty: I do not know. We will certainly try. I do not know what the situation is as to how quickly we can get them. I am sure we will be able to go forward with our questioning of the witness with respect to the various documents

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that we do wish to ask about tomorrow. I am not certain that we would have copies of those documents available for counsel tomorrow, that depending entirely on what facilities we are able to obtain.

Presiding Examiner: We will take that up when we come to it.

At the present time I understand your request is to recess this matter until tomorrow morning?

Mr. Dougherty: Yes, sir.

Presiding Examiner: Let me ask this, Mr. Dougherty: Do you have and idea how long you will be with this witness?

(1081)

Mr. Dougherty: I would hope no longer than a day. For example, some of the material I was looking at in one of these fields, there must have been a dozen or more contracts that were all similar. So the questioning of that one might cover the whole areas of contracts. So I think by getting it organized in that way, and using such material as examples, we would not have much trouble finishing with him in one day.

Presiding Examiner: You think it will save time to recess until tomorrow, then?

Mr. Dougherty: Oh, yes, very definitely.

Presiding Examiner: Is there any objection by any party to a recess of this proceeding until tomorrow morning?

Mr. Fletcher: No, I would not object to that, Mr. Examiner, particularly if we can get forward. It is true that there

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are more than just a few; I think the greater number of these contracts are identical as to terms, and I think that the amendments will fall into two or three general categories, and I think that it is not necessary to have every one of them.

Presiding Examiner: Very well.

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PROCEEDINGS

Presiding Examiner: The hearing in the matter of United Gas Pipe Line Company, Docket Nos. G-1142 et al., will please come to order.

Are you ready to proceed now, Mr. Dougherty?

Mr. Dougherty: Yes, Mr. Examiner.

If we may have Mr. Barnett back on the stand I think we can start in on our questions.

Presiding Examiner: Very well.

Whereupon,

**Excerpts from Transcript of Hearing Held Tuesday, January 18, 1955**

**Charles C. Barnett**

resumed the witness stand, and was examined and testified as follows:

Mr. Dougherty: I think a brief explanatory statement as to the procedure we have in mind might be helpful so at the beginning it will be as clear as we can make it what our procedure is.

As the Examiner will recall, yesterday there were a number of volumes of the contracts which were produced pursuant to the subpoena of the Union Producing Company, produced here by Mr. Barnett. Each of those volumes was given an exhibit number for identification.

As I stated during the proceedings yesterday, it was apparent after a preliminary examination that we would not need to put into the record every single one of these contracts.

**1092**

So we did proceed to pick out those that we thought, as best we could tell, were illustrative, and would be typical contracts in each instance, or, if not in each instance, in most instances, a contract which had its duplicate with a number of others.

So we did that, and at least with two or three or four of these volumes had such contracts photostated, and have them here ready for presentation.

Now, in that connection we have to determine, or Your Honor should determine, whether we should continue with these exhibit numbers, for identification, that have given to these large volumes with some sub-identification number, or whether we will leave those as they are, since only a portion of the sheets from those will be put in.

(1092)

For example, the first volume which was identified as No. 100, we have, I think, only one contract out of that volume, certainly no more than two, that we decided would be needed, because particularly in the Monroe field, all of the contracts are printed contracts, and they seem to be the same except for some change in date, so we have one out of the Floyd field, two out of the Monroe field, and two out of the Lisbon field, and those five separate documents, or sets of documents which we have extracted from this volume which has been identified as No. 100, are all that we want from that thick volume.

However, if Your Honor prefers it, we could give these

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now new exhibit numbers.

Presiding Examiner: No, I think we better keep to the same exhibit numbers because there might be some confusion later if we do not.

If later on in the day you decide that you want to have identified these various contracts, we can give those contracts exhibit numbers and then if and when the time comes that you want to offer them in evidence we will consider what should be done at that time.

Mr. Dougherty: Well, for example, in this first one, my questions would have to do with—

Presiding Examiner: You say the first one. What is that?

Mr. Dougherty: The first one I am going to present.

Presiding Examiner: The first of a number of contracts which are similar in one of the volumes; is that right?

Mr. Dougherty: Yes. For example, from the Floyd field, which contracts are contained in Exhibit 100, for identification, we are proposing to put into the record Contract No. 2173, which is only one, I think, out of four contracts from that Floyd field.

Presiding Examiner: Well, what I think might be done, unless you have some better suggestion, is if and when you want to present the contract to which you have referred for identification, I think we can identify that as Exhibit 111 at that

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time.

Mr. Dougherty: Well, that is what I had in mind.

Presiding Examiner: Then we can proceed in that way, in the usual way, and I think that will suffice for your purposes.

Mr. Dougherty: Yes, I think so.

Mr. Fletcher: Mr. Examiner, I agree thoroughly. I appreciate your ruling, and I think it is correct. You see, we had a subpoena. There was a question of the sufficiency of the application. There was a question of whether there were any proper grounds shown for a subpoena.

Now, the subpoena was issued at their instance, and it created and caused United a considerable amount of trouble and expense. Now, we have produced here in compliance with the command of the subpoena a tremendous mass of material, and the very fact that only one instrument out of one of those volumes marked for identification is used is itself a commentary upon the subpoena, and I would object to any other procedure because I want this record to reflect what the subpoena covered, and what was done, and what was used out of what was subpoenaed.

Presiding Examiner: Well, I do not think there is any difference between you and Mr. Dougherty as to what course we shall pursue here.

Mr. Dougherty: Well, I thought when I mentioned that, for example, in the Monroe field there are—I do not know, maybe 50 to 100 contracts, each of which is on a printed con-

tract form, and each of which is identical except for maybe a date, and I suggested that it would not be necessary that we put in every one of those, and that we could use one as typical and have that in the record, and I thought that was what Mr. Fletcher agreed with.

Mr. Fletcher: I agreed with that statement, but I do not think that has anything to do, Mr Dougherty, with the point I was just trying to make.

Presiding Examiner: Well, I think now whatever the situation has been up to now, what I am concerned with is what course we are to follow from this point forward, and I think we have reached the point where when Mr. Dougherty wants to refer to any of the exhibits which he has taken from the various volumes which have been produced by United, we will give that a new exhibit number, and in that way we shall be able to have the record clear as to exactly what the situation is.

Direct Examination (Continued)

By Mr. Dougherty:

Q. Mr. Barnett, you have before you now the compilation of contracts for the Monroe District, at least a portion of them for the Monroe District, that has been identified as Exhibit 100, do you? A. Yes, sir.

Q. And referring now to the Floyd field, there are how many contracts in the Floyd field contained in that Exhibit



100? A. Three.

Q. And are those numbered as Contracts Nos. 2173, 2172, and 2174? A. Yes, sir.

Q. Would you look at Contract 2173 and tell us whether or not that is a typical contract of those three contracts in the Floyd field?

Presiding Examiner: Excuse me; before we go any further, in your question to the witness you, I think, stated that these are the only contracts in the Floyd field. I assume by the question you meant these are the only contracts with Union Producing in the Floyd field; is that correct?

Mr. Dougherty: Yes, Mr. Examiner, that is correct. My questions to him, unless otherwise indicated, are all related to Union Producing.

Presiding Examiner: Yes. I am sorry, Mr. Barnett, I do not know whether I interruped your train of thought.

The Witness: No, sir.

By Mr. Dougherty:

Q. Then, would it be correct to say that Contract No. 2173 could be used as a typical contract of those with Union Producing Company in the Floyd field? A. I think it could.

Mr. Dougherty: If the Examiner please, we would like to



have marked for identification a document which consists of four sheets.

Presiding Examiner: I think there are five.

Mr. Dougherty: Yes, five, the first sheet being a letter dated July 18, 1947, to Union Producing Company, Shreveport La., from United Gas Pipe Line Company, signed "M. A. Abernathy, Vice-President," and the other four sheets being the photostat of a gas purchase contract, Contract No. 2173, consisting, as you have mentioned, of four sheets.

Presiding Examiner: Very well, that will be identified as Exhibit No. 111.

(Letter dated July 18, 1947, to Union Producing Co. from United Gas Pipe Line Co. and Contract No. 2173 was

marked Mississippi River Fuel Corporation Exhibit No. 111 for identification.)

By Mr. Dougherty:

Q. Mr. Barnett, referring now to the document that has been identified as Exhibit No. 111, which is a photostatic copy of Contract 2173, the original contract, that is the photostatic part of the printed form, is dated what date? A. September 26, 1937.

Q. And under the provisions of Article 10 of that contract, what price is stated? A. Three cents.

Q. And under the provisions of Article 15, what was the



time date of the contract? A. I did not understand that.

Q. Well, what is the expiration date of the contract; that is, the period of the contract, as stated in Article 15? A. December 31, 1962.

Q. Now, then, referring to the first sheet of the exhibit, which is a photostated copy of the letter of July 18, 1947, is that the document which increased the price from 3 cents to 4 cents for this Contract 2173? A. Yes, sir.

Q. And there was no other document than this one you have submitted with these contracts, to your knowledge, I mean? A. No, sir.

Q. This letter of July 18, 1947, also covers the other contracts in the Floyd field with Union Producing? A. Yes, sir.

Q. And is that still the situation as of the present time? A. Yes, sir.

Q. Then, Mr. Barnett, if you will still look at the volume which has been marked for identification as Exhibit 109 to contracts under the Monroe field, and I want you to turn to Contract 2602, will you examine that, that 2602 contract? A. All right, sir.

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Q. Now, are you familiar enough with the contracts in the Monroe field between Union Producing Company and United Gas Pipe Line Company to tell us whether that contract is typical of all of the contracts in the Monroe field, or let me put it this way:

If there are any contracts in the Monroe field between United and Union Producing that are different from this could you so indicate?

Presiding Examiner: Do you not think, Mr. Dougherty, that you ought to give this an identification number?

Mr. Dougherty: Very well.

If the Examiner please, we would like to have marked for identification as Exhibit No. 112 a photostated copy of a contract and letter which consists of five sheets altogether, the top sheet being a copy of a letter of July 18, 1947, to Union Producing Company, Shreveport, La., from United Gas Pipe Line Company, by M. A. Abernathy, vice-president, and the other four sheets being photostatic copies of the printed Contract No. 2602.

Presiding Examiner: Very well, that will be identified as Exhibit 112, for identification.

(The Letter dated July 18, 1947, to Union Producing Co. from United Gas Pipe Line Co. and Contract No. 2602 were marked Mississippi River Fuel Exhibit No. 112, for identification.)

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By Mr. Dougherty:

Q. Would you like some time to look through that group? A. I think I have it, if you will re-ask your question, to be sure I am with you.

Q. Well, my question is referring to Contract 2602, which has been marked as Exhibit 111, will you tell us if

that is typical of and similar to all of the other contracts in the Monroe field between United and Union, and if there are any exceptions you could so indicate? A. That appears to be a typical contract, with the exception that I find that we have Contract 2613 that I know is different.

Mr. Fletcher: Mr. Dougherty, pardon me, but I think you referred to that as Exhibit 111, and it ought to be 112.

Mr. Dougherty: If I said 111, I was mistaken.

Mr. Fletcher: I understood you to say so.

By Mr. Dougherty:

Q. Now, with respect to the contract that has been identified as Exhibit 112, and referring, first, to the printed contract itself, what date was that made? A. The contract was made on June 30, 1947.

Q. And in Article 10 of the contract, what is the price stated? A. Three cents.

Q. And what is the period of the contract as stated in



Article 16? A. December 31, 1962.

Q. Now, then, referring to the letter, July 18, 1947, is that the document that increased the price from 3 cents to 4 cents for Contract 2602? A. Yes, sir.

Q. And just as I asked you with respect to the Floyd field, that is the only document that does that particular thing, and is still in full force and effect? A. Yes, sir.

Q. Is that same situation true of all of these other contracts in the Monroe field except for Contract 2613? A. As far as I can tell; yes, sir.

Q. Well, if you wish to make any correction later, you certainly could do that.

Now, when we say is the contract similar, I want to be sure that you and I understand each other. Does that also include that price of 3 cents as originally stated in

the printed contract and, of course, you have already stated that the July 18 letter, 1947, does apply fo all of the contracts? A. Yes, sir.

Q. And the expiration dates of all of those other contracts, excluding, now, 2613, in each instance is December 31, 1962? A. Yes, sir.

**1102**

Mr. Dougherty: Then, if the Examiner please, we would like to have marked for identification the document which is a photostatic copy of contract 2613, and that bears on its face the title at the top "Gas Purchase Contract," and does have the number 2613. It consists of 19 pages, as I have counted them.

Presiding Examiner: Well, there are 19 pages followed by Exhibit A, which is two pages, so in all the document would be 21 pages.

That will be marked for identification as **Exhibit No. 113.**

(The Gas Purchase Contract No. 2613, consisting of 19 pages, and Exhibit A, consisting of two pages, were marked Mississippi River Fuel Exhibit No. 113 for identification.)

By Mr. Dougherty:

Q. Mr. Barnett, will you turn to Contract 2613 in this volume which has been identified as Exhibit 100.

Is that the contract which you mentioned just a while ago as being the one that was not similar to the document which had been marked for identification as Exhibit 112? That is the contract you referred to a while ago? A. Yes, sir.

Q. In Section 10, what is the price stated in that contract? A. Four cents.

Q. And what is the date of the contract?

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A. February 16, 1949.

Q. And, to your knowledge, that is the only contract that was made between Union and United for the Monroe field subsequent to this date of July 18, 1947, which is the date of the letter that raised the price from 3 to 4 cents on the other contracts? A. Yes, sir.

Q. And in Article 15, what is the term of the contract? What is the period stated in Article 15, on page 14?

Presiding Examiner: There is not a specific period stated in Article 15. I suppose the only thing the witness could do under these circumstances would be to read Article 15 into the record, if that is what you want done.

By Mr. Dougherty:

Q. Well, is there any other provision than that, Mr. Barnett, that relates to the period of time? A. Well, it all relates to the period of time.

Q. That is all on that volume, Mr. Barnett.

Mr. Dougherty: If the Examiner please, we would like to have marked for identification a photostatic copy of a document consisting of a letter dated July 18, 1947, to Union Producing Company, Shreveport, La., from United Gas Pipe Line Company, by M. A. Abernathy, vice-president, and attached thereto a Contract No. 2576, which at the beginning shows the date of June 19, 1944, consisting of apparently 10 pages.

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Presiding Examiner: That will be marked Exhibit 114, for identification.

(Letter dated July 18, 1947, to Union Producing Co. from United Gas Pipe Line Co. and Contract No. 2576 were marked Mississippi River Fuel Exhibit No. 114 for identification.)

By Mr. Dougherty:

Q. Mr. Barnett, would you turn to this Contract 2576, which is found in the Lisbon field, identified as Exhibit 110.

Mr. Da Pra: What is the question?

Presiding Examiner: He just asked him to turn to a particular volume. He did not ask a question.

Mr. Fletcher: May I ask a question to get something straight?

Presiding Examiner: Yes.

Mr. Fletcher: Mr. Barnett, have you seen the photostat that Mr. Dougherty has made, Mr. Barnett?

The Witness: No, sir.

Mr. Fletcher: What I want to know is if these papers constitute the present contract, and if that is the complete copy of the contract, or is there any other later amendments to that contract?

Presiding Examiner: You are referring to Contract No. 2576?

Mr. Fletcher: Yes, sir; that has been marked Exhibit No.

**1105**

114. There is an amendment of July 18, 1947, and what I want to know is, is there any amendment later than July 18, 1947, to that contract, or is that the complete contract that is now in force?

The Witness: No, sir; there must be an amendment, additional instruments to this contract.

Mr. Fletcher: Is it in the papers that were produced here under the subpoena?

The Witness: To the best of my knowledge, it was, sir.

Mr. Dougherty: Mr. Fletcher, there are two letters here that were in there, also, one from Claiborne Gasoline Company, dated January 1947, and another letter of July 18, 1947, about gasoline. Now, those two letters are

the only ones that were there, and I thought they were not relevant to the price and terms question.

(There was a discussion off the record.)

Presiding Examiner: On the record.

By Mr. Dougherty:

Q. Mr. Barnett, will you turn to the contract, 2576, which bears the date of the 19th of June, 1944, and has been identified as Exhibit 114.

Now, that contract is one that is included in the compilation that has been submitted, is it not? A. Yes, sir.

Q. It was executed at the time, and then I think it was



subsequently superseded by some later contract? A. And we are operating under the later contract today, which has completely superseded this one.

Q. Now, Mr. Barnett, is there a price stated in this contract 2576, other than the 4-cent price which is in the letter of July 18, 1947?

Mr. Fletcher: It is on page 4, in Article 4, Mr. Dougherty, at the bottom of the page.

Mr. Dougherty: Oh, yes.

By Mr. Dougherty:

Q. Do you see that, Mr. Barnett? A. Yes.

Q. And what is that price? A. Three cents.

Q. Then that price was increased by the letter of July 18, 1947, which was the first sheet of this Exhibit 114, was it? A. Can I see that exhibit?

Q. Oh, yes. Surely. A. Yes, sir.

Mr. Dougherty: Then, Mr. Examiner, we would like to have marked for identification a photostatic copy of a contract; the first page has the title "Gas Purchase Contract," and the number 2632, and consists of 19 numbered

pages, but there is a page 13 and 13-A, also, and then there are two separate sheets

1107

of acknowledgments. Altogether, there would be 21 different sheets.

Presiding Examiner: Have you given the date of that contract, sir?

Mr. Dougherty: The date is found on the last page, I think, and it shows May 2, 1951.

Presiding Examiner: All right. That will be marked Exhibit 115, for identification.

(Gas Purchase Contract No. 2632, dated May 2, 1951, was marked Mississippi River Fuel Exhibit No. 115, for identification.)

By Mr. Dougherty:

Q. Mr. Barnett, would you turn to contract 2634, which is in the Lisbon field, and found in this volume marked for identification as Volume 101. A. I am having trouble finding it.

Q. Mr. Barnett, I note on page 18 that that was executed by Union and also by United on May 2, 1951? A. Yes, sir.

Q. Did you have to do with the making or negotiating of the contract? A. Yes, sir.

Q. And what does this contract cover in the way of gas supply? A. It covers Union's lands and leaseholds in the Lisbon

1108

field.

Q. And was the purpose of it to modify the previous contracts in the Lisbon field with Union? A. Yes, sir.

Q. And does it, therefore, cover all of the gas which

United buys from Union from the Lisbon field? A. Yes, sir.

Q. And what price is stated? I am told it is in paragraph 9. A. The price is 6½ cents until January 1, 1954. During the next five-year period, 7½ cents, and thereafter for the remainder of the contract 8½.

Q. Referring, now, back to the contract which has been marked for identification as Exhibit 114, that is contract 2576, what was the period of time for that contract; that is, how long was it to last by its terms?

I note in Article 7, Mr. Barnett, that it refers to a processing contract between Union and Claiborne Gasoline Company, the article stating that the agreement should be coextensive in terms with that processing contract.

Do you have any knowledge of the extent of that processing contract?

Mr. Da Pra: Mr. Dougherty, you are referring to Exhibit 114, for identification, are you not?

Mr. Dougherty: Yes, sir.



By Mr. Dougherty:

Q. Were you able to determine that from any of the documents, Mr. Barnett?

If not, maybe you could supply that information later. A. It ought to be in here, but I cannot find it.

Q. Well, possibly at the recess you can.

Now, going to Exhibit 115, for identification, that is contract 2634, you note that there is a reference to the Claiborne Gasoline Company on page 3 of Exhibit 115. Is that the same Gasoline Company and plant that is referred to in the contract that has been marked for identification as Exhibit 114? A. Yes, sir.

Q. Is the gas in the Lisbon field all processed through this Claiborne plant before United takes it? A. I think

United takes it before it is processed, and then it is processed.

Q. I see, but it is all processed? A. It is all processed before it leaves the field.

Q. Very well.

Mr. Dougherty: If the Examiner please, we would like to have marked for identification a group of photostatic sheets of contracts, the first page of which has a heading "Amendment to Gas Purchase Contracts," and a date of the 13th day of February, 1951, and in the upper right-hand corner there are



these numbers, 2075, 2094, 2096, 2552, and 2607. That contract is followed by an amendment, or first I should say that that first contract consists of eight numbered pages, and four other sheets, two sheets of acknowledgments, one headed "Exhibit A," and then the table for determining deviation from Boyle's Law.

Then there is a document also a part of this exhibit, entitled "Amendment to Gas Purchase Contracts," which has three numbers in the upper righthand corner, 2075, 2552, and 2607. That consists of five numbered pages, one sheet marked Exhibit A. Then that is followed with the photostatic copy of a printed form which has in the upper righthand corner the number "2075," and consists of four sheets, the whole consisting of 22 pages.

Presiding Examiner: That will be marked as Exhibit 116, for identification.

(Amendments to Gas Purchase Contracts, dated February 13, 1951, consisting of 22 pages, were marked Mississippi River Fuel Exhibit No. 116, for identification.)

By Mr. Dougherty:

Q. Mr. Barnett, will you take the volume of contracts which has been marked for identification as Exhibit 104,

and turn to the contract from the Bethany Field, that is No. 2075.

Mr. Barnett, I am handing you the actual photostat which has been marked for identification, because we have omitted from the compilations the tax letters that were attached which

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relate to certain sharing of State taxes in Texas, and what I want to have you tell us is whether or not the documents we have assembled, and have had photostated contain the basic contract terms, particularly with respect to price and length of contract? A. I do not think so.

Q. What else should there be? A. You only have on the back "Gas Purchase Contract, 2075," yet you have on the front amendments to several contracts.

I think you will need all of those contracts.

Q. Well, are not some of those other contracts similar to 2075? A. Not necessarily.

Q. Well, the only purpose of this top amendment is so far as it relates to 2075, Mr. Barnett, is that it was found —you will notice in the compilation you have here for 2075—you have that document? A. That is right, sir, but you will also notice this amendment affects 2094, 2096, 2552, and 2607.

Q. Well, as far as contract 2075 is concerned, are those documents the ones that relate to that? A. Insofar as 2075 is concerned, yes, but we have quite a few additional contracts that are not represented by 2075.

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Mr. Fletcher: If you will pardon me, upon the answers of the witness I will object unless the other contracts are also identified and offered, because it is perfectly apparent from the answer of the witness in response to counsel's question that all of these other contracts are tied into this

same matter. Therefore, it is impossible to separate the amendment dated the 13th of February, 1951, insofar as Contract 2075 is concerned, and for the Commission and the Examiner to have an accurate picture they would have to have the other contracts as well, and the same situation would result, I take it, Mr. Examiner, with respect to the amendment which immediately follows, dated the 15th of February, 1949, and which shows on its face to refer to Contracts 2075, 2552, and 2607.

Presiding Examiner: Now, where is this exhibit of 1949?

Mr. Fletcher: It follows immediately after the first, the first two pages—

Presiding Examiner: I have it now.

All that has happened now is Mr. Dougherty has offered these contracts for identification. No offer in evidence as yet has been made. I assume that your objection is an anticipation of the time when they will be offered into evidence?

Mr. Fletcher: Well, it would be so, Mr. Examiner, and also it seems to me the objection was designed at the fundamental proposition that questions directed at an instrument or instruments marked for identification, which are only partial, are



themselves objectionable for the same reason.

In other words, a question directed to a partial matter does not reflect a true picture, and is in itself objectionable unless the complete matter be there.

Mr. Dougherty: Well, what we did there was to take the documents that were presented to us pursuant to the subpoena numbered as Contract 2075, and we took those and photostated them.

Now, it is apparent, I think, from an examination of

these that this same amendment, say, of February 13, 1951, the top sheet, does apply to a number of contracts.

My question right now, however, is related only to one of the contracts to which it applies, and if those others are not similar to 2075 I have no objection to putting them in, but I would like to get it straight now, Mr. Examiner, as to what we should do.

I took what you gave us, and if this document that was in this compilation with respect to 2075 is not related to 2075, or if it cannot be used as related to 2075 except rather from the others, then what we want is whatever 2075 is.

Mr. Fletcher: But, Mr. Examiner, the application for the subpoena states that it was desired to go into questions of negotiation, and the reasons for change in price where change in price occurred, and so far we have had quite a number of exhibits, and there has not been a single solitary question about



a negotiation or about a reason for a change in price.

Now here comes an instrument—he starts with one basic contract. There then follows an amendment referring to three contracts. There then follows an amendment referring to five contracts, and how that may be tied into the question of reason or negotiation, we do not know, but in the light of the subpoena we have produced here and counsel now selects a fragmentary portion of one transaction, and I say that is objectionable in the light of the purposes which were stated in the application for subpoena, and it does not give a true picture.

Presiding Examiner: Well, I would assume in the light of the objection that Mr. Dougherty will now have identified not only Contract 2075, but the other four contracts referred to on the face of Exhibit 116, for identification.

Is that correct, Mr. Dougherty?

Mr. Dougherty: Well, I am perfectly willing. I do not have photostats of them, though.

Presiding Examiner: Well, I assume you can obtain those. I assume those contracts have been produced by United; is that correct?

Mr. Fletcher: They are in the compilation, are they not, Mr. Barnett?

The Witness: Yes.

By Mr. Dougherty:

Q. Are they in this particular volume, Mr. Barnett, that



would be 2094, 2096, 2552, and 2607? Are there any in that one?

Presiding Examiner: I think in order to avoid any loss of time, I think you can make reference to these specific contract numbers since they are contained in Exhibit 104, and then a little later today, perhaps, you can comply with the rules with regard to the presenting to the parties the requisite number of copies.

Mr. Dougherty: If the Examiner please, I do not think they all are in this Volume 104. That is what is troubling me.

Presiding Examiner: Well, perhaps if they are not in that volume they are in another.

Mr. Dougherty: Maybe if we had five minutes' recess we could find them.

Presiding Examiner: Well, it is almost 11:15. It is time for the normal morning recess.

We shall take a ten-minute recess now.

(Whereupon, at 11:15 a.m., a recess was taken until 11:25 a.m. of the same day.)

(1115)

Presiding Examiner: The hearing will please come to order.

Proceed, Mr. Dougherty.

By Mr. Dougherty:

Q. Mr. Barnett, going back to this Exhibit 116 which has

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attached as a part of it the basic Contract 2075, and which has at the front page a reference to other contracts, that is 2094, 2096, 2552, and 2607: Now, would you turn to this volume marked for identification as 104, and if you will look, please, at 2607, that is the basic contract, and then tell us if with respect to price and term the provisions are the same as Contract 2075, and, if not, can you point out where they are different?

Mr. Fletcher: Mr. Examiner, I will object to that question if by that question it is sought to avoid the coming in of the contract, because the issue here upon their application for the subpoena was the negotiations that led up to it, the reasons for the change, and the differences, if any, in the contract. Now, they said they were interested in price, yes, but the reasons and the negotiations —I do not know where there are any—but the contract is the best evidence of where there are.

Presiding Examiner: Well, I gathered before this recess, Mr. Dougherty, that you would have photostated and identified in addition to 2075, the other four contracts mentioned on the first page of Exhibit 116.

Presiding Examiner: Well, we can do that.

Frankly, I think it is just a useless expenditure of time and energy because, as we see these basic contracts, they are the same, essentially.

Presiding Examiner: Well, there may be a difference of opinion in your view.

Mr. Dougherty: Yes.

By Mr. Dougherty:

Q. Now, we do see in this volume, Exhibit 104, for identification, the Contracts 2607 and 2552, do we not? A. 2607—

Q. I am just trying to get where these others are so I will be certain we are having the right ones photostated. Now, I see in this volume which has been marked for identification, as Exhibit 104, two contracts with the numbers 2607 and 2552, and those would be the ones referred to on the first sheet of Exhibit 116, would they? A. Yes, sir.

Q. Now, then, there are two others there, numbered 2094 and 2096, which I do not find in the Bethany volume, and I think you pointed out during the recess that they were in the Waskom field; is that correct? A. That is 2096 and 2094.

Q. And that is in the volume that has been marked for identification as 106? A. Yes, sir.

Mr. Dougherty: I find, Mr. Examiner, we are having 2096 photostated, but it is not yet available. So we will in turn have these others, and have them produced.



Presiding Examiner: Very well.

By Mr. Dougherty:

Q. Now, with respect to Contract 2075 alone, now, Mr. Barnett, the original contract was made when? A. September 26, 1937.

Q. And the price as stated in Article 10 of that contract was what price? A. Four cents.

Q. And the life of the contract, as stated in Article 15, was what term? A. December 3, 1962.

Q. Now, what is the date of the first amendment to 2075? A. February 13, 1951.

Q. I have one here, too, February 15, 1949, Mr. Barnett. A. There seems to be two amendments to it, one dated February 15, 1949, and one dated February 13, 1951.

Q. Now, the 1949 amendment changed the price in what respect? A. It changed the price for the five-year period commencing on January 26, 1949.

Q. To what price? A. To 5 cents.

Q. Did that amendment make any change in the term of the contract?



A. No, sir.

Q. Then the 1951 amendment made what changes in the price? A. The 1951 amendment provided for a price of 7 cents from October 1, 1950, to January 1, 1952, 8½ cents for five years, 9½ cents for five years, 10¾ cents for five years, 11¾ cents for five years.

Q. What change, if any, was made in the term of that? A. The term was extended until January 1, 1972.

Q. Did you carry on negotiations of this 1951 amendment, Mr. Barnett? A. Yes, sir.

Q. When was it you first became designated as the one in charge of these gas supply matters? A. Well, I have been negotiating and making contracts with all companies, including Union Producing Company, since late 1945.

Q. 1945? A. Yes. I did not make them all. There are other officials of United who have made some.

Q. Now, in respect of this Contract 2075, when the term was extended from December 31, 1962, to January 1, 1972, was there any geological data available to you with

respect to gas reserves, and the length of time that they could be produced?

Mr. Fletcher: Mr. Examiner, I will object to the question

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being limited to 2075, because the amendment of February 13, 1951, to which counsel now addresses himself to, shows that it refers to a number of other contracts, and the prior answers of the witness have indicated that all of those matters were bound together, and it seems to me that the questions should be related to the context in which the matter occurred.

It does not appear from the record thus far that 2075 can be or was segregated for a sole or separate negotiation with respect to the amendment of February 13, 1951, and, therefore, it does not present an accurate picture.

Presiding Examiner: Well, actually, I would think that on the face of Exhibit 116 it shows that that amendment related to some five contracts, and I gather, Mr. Dougherty, that you would limit your question to 2075 among other contracts?

Mr. Dougherty: Well, I was limiting it in this first instance to 2075. I can expand it to Bethany field, to the contracts listed in the Bethany field, because that is a separate field, and then, of course, everything cannot be asked at one time.

Presiding Examiner: That is right. I understand your problem, but I also understand United's problem. They do not want, I think perhaps correctly, to have any impression created that there was some separate negotiation regarding 2075 without relation to certain other contracts. So I think if you

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make it clear in your question that you are asking regarding 2075 as part of the negotiation, and not the entire negotiation, he can answer it.

(1121)

By Mr. Dougherty:

Q. Well, I do note those five contracts are referred to in Exhibit A, the first part of 116? A. Yes, sir.

Q. Well, you may consider my question as relating to those other contracts as well.

My question was what information and data did you have with reference to gas reserves under those contracts as to the availability for a further period from December 31, 1962, to January 1, 1972, whether there was any such data? A. Consideration was given to it, but there was no degree to it. The Bethany and Waskom fields are fields located, frankly, on top of our line. Those fields started out as shallow fields some years ago. Production has gotten deeper. Hansbro came into the picture and started drilling wells. Skelly came into the picture and started drilling wells. Texas Company came into the field and started drilling wells. In fact, the Bethany field is still expanding.

As for the specific reserve, I do not know, but to us the Bethany field is a major reserve, a major source of supply, because we have contracts not only with Union Producing Company but with maybe ten or twelve other producers in the same field.

1122

Q. Well, my question was related directly to these contracts with Union Producing, and what, if any, geological reports or data you had as a basis for these. A. Our picture, as we say, and I saw it, in the field—I did not go down and see how much reserve is under the contract in this sand, and how much is in this sand, but I was advised by our geological department that the Bethany field was a major field, and is growing today, because there is still new gas in the Bethany field.

Q. From Bethany do you know what proportion of gas United buys comes from others than Union, and what pro-

portion comes from Union? A. I do not know offhand what it is. I cannot answer.

Mr. Dougherty: If the Examiner please, may we have marked for identification a group of photostatic sheets, the first one entitled "Amendment to Gas Purchase Contracts, Agreement the 13th of February, 1951." That has a series of numbers at the top in three columns, the first column starting with 1041, the second column with 1113, and the third column starting with 1137.

The first part of the exhibit consists of eight numbered pages, two pages of acknowledgments, one marked Exhibit A of two pages, rather than one page—

Presiding Examiner: Three pages, isn't it?

Mr. Dougherty: Yes, three pages of Exhibit A. I see it is. One sheet showing the table for deviation purposes, and



then an amendment dated February 15, 1949, with a series of numbers in the upper righthand corner, starting with 1041, and consisting of three pages of text, two pages of Exhibit A, and then two of acknowledgments.

Altogether, I count 22.

Presiding Examiner: I count 21.

Mr. Dougherty: You are right.

Presiding Examiner: That will be marked Exhibit 117, the first page of which shows the agreement of February 13, 1951.

(Amendment to Gas Purchase Contracts, dated February 13, 1951, consisting of 21 pages, was marked Mississippi River Fuel Exhibit No. 117, for Identification.)

By Mr. Dougherty:

Q. Will you turn to Contract 1041, the Bethany field?

Presiding Examiner: Is that part of Exhibit 117?

Mr. Dougherty: Yes.

(1123)

Mr. Fletcher: Mr. Examiner, I have the same objection to Exhibit 117 that I had to Exhibit 116, and in addition to that the instrument, a copy of which counsel handed me, does not contain any contract. It contains two amendments, one beginning at the top of the page, dated February 13, 1951, which is the same date as the amendment of like date in Exhibit 116, and then one dated the 15th of February, 1949, but after you get past that second one there is not only no Contract 1041 but none of the others whose numbers are listed, so it is incomplete on its

1124

face.

Presiding Examiner: That is why I wondered about 1041.

Mr. Dougherty: I think everyone will recognize that is a little difficult to get all of these straightened out overnight, as we have done. We have here 1218 and 1248.

Presiding Examiner: You intend to have those marked for identification, Contracts 1218 and 1248?

Mr. Dougherty: Yes. We might just as well have that done now.

Presiding Examiner: We have this amendment to gas purchase contract, that is marked Exhibit 117, for identification.

Mr. Dougherty: The next one is a document that has on the first page "Gas Purchase Contract," and has the number 1218 and that—

Presiding Examiner: You wish to have a document marked for identification as Exhibit 118? Will you describe it?

Mr. Dougherty: Yes, that is a contract, the title says it is between Mid States Oil Corporation, a Delaware Corporation, Union Producing Company, a Delaware corporation, Magnolia Petroleum Company, a corporation, M. G. Hansbro, and C. Andrade, III, individuals hereinafter designated collectively as Seller, and United Gas Pipe Line

Company, a Delaware corporation, hereinafter designated as Buyer, and that consists of 22 numbered pages with an Exhibit A attached, altogether 31 pages.

Presiding Examiner: Very well, that will be marked Exhibit

**1125**

(Contract between Mid States Oil Corporation, Union Producing Co., Magnolia Petroleum Co., M. G. Hansbro and C. Andrade, III, and United Gas Pipe Line Co., Consisting of 31 pages, was marked Mississippi River Fuel Exhibit No. 118, for identification.)

Mr. Dougherty: Then we would like to have marked for identification a photostatic copy of a gas purchase contract which is entitled "This contract made and entered into by and between Union Producing Company, a Delaware corporation, hereinafter designated as Seller, and United Gas Pipe Line Company, a Delaware corporation, hereinafter designated as Buyer," and in the upper righthand corner has the number 1248. There are 17 numbered pages, then two pages of acknowledgments, and Exhibit A of three pages, so that would be 22 pages altogether in this one.

Presiding Examiner: That will be marked for identification as Exhibit 119, for identification.

(Gas Purchase Contract between Union Producing Company and United Gas Pipe Line Company, No. 1248, consisting of 22 pages, was marked Mississippi River Fuel Exhibit No. 119, for identification.)

Presiding Examiner: I think you have one more document you have handed me. Maybe we could take care of that at this time.

Mr. Dougherty: May we have marked for identification a

**1126**

photostatic copy of a contract, the first sheet of which is entitled "Amendment to Operating Agreement." It says

"This agreement made and entered into this 30th day of March, 1953, by and between Union Producing Company, a corporation, hereinafter designated as Union, and United Gas Pipe Line Company, a corporation, hereinafter designated as United," and it has at the upper righthand corner the number 3100. That consists of 11 numbered pages, two pages of acknowledgments, one of the figures for deviation purposes, and then there follows an amendment to the operating agreement, Union Producing Company, and United Gas Pipe Line Company, dated April 8, 1949, and effective June 28, 1947, increasing price to Union to 4 cents at well head and up at the top it says "G.P.C. 3100." In addition to that title sheet, there are two pages of that portion, and then following is a contract that has at the upper righthand corner "Gen. G. P." and then under that G. P.-3100, and that is entitled "Agreement made and entered into by and between Union Producing Company, a corporation, of the State of Delaware, duly authorized to do business in the State of Louisiana, and United Gas Pipe Line Company, a corporation, State of Delaware, duly authorized to do business in the State of Louisiana." That consists of 11 pages. Altogether this exhibit will be 28 pages, as I count.

Presiding Examiner: That will be marked Exhibit 120, for identification.

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(Amendment to Operating Agreement, dated March 30, 1953, by and between Union Producing Co. and United Gas Pipe Line Co., No. 3100, and Amendment to Operate Agreement, dated April 8, 1949, No. G.P.C. 3100, consisting of 28 pages, was marked Mississippi River Fuel Exhibit No. 129, for identification.)

Mr. Fletcher: Mr. Examiner, as long as we are at a stopping place, so I won't be interrupting, as I understand it counsel has proffered Exhibit 118 and 119, which in con-

nection with Exhibit 117 would reflect the gas purchase contracts Nos. 1218 and 1248. I understand that he will offer the others that are numbered on the top of Exhibit 117, and with that understanding I make no further objection to his questioning insofar as Exhibit 117 is concerned.

Presiding Examiner: Well, I do not know whether that is Mr. Dougherty's understanding, or not.

Is that correct?

Mr. Fletcher: Is that correct, Counsel?

Mr. Dougherty: Well, Mr. Fletcher, we felt that these two contracts, 1218 and 1214, were typical of all of the others. Now, if that is not true—

Mr. Fletcher: No, you see, Mr. Dougherty, the reason that is such a fragmentary and incomplete picture, is that I think you will find when you get them all in and question the witness, that the changes that were made and the amendments that were made was a package deal that was made covering all of these,



and it was not made or influenced or persuaded by any one of them, and, therefore, it presents a vastly inaccurate and incomplete picture.

That is the basis, of course, of my objection, that they wrapped it up together. They did not handle it separately, and it must be judged in the way they handled it.

Mr. Dougherty: Well, it would seem to me if all of these other documents are the same in terminology, it does not interfere with that point. It did not seem to us that we had to have physically a whole group of similar contracts in for whatever purpose.

Mr. Fletcher: They may or may not be similar. I do not know. But they speak for themselves, and they are the best evidence as to whether they are similar, and no other evidence about their similarity, it seems to me, is proper.

(1128)

Mr. Dougherty: Well, we tried to do this in order to expedite the hearing, so we could get it going.

Presiding Examiner: Well, apparently there is some question as to how this should be handled. I do not think you have any objection to reproducing the other documents in addition to 1218 and 1248; is that correct?

And I think in view of the fact that I understand, Mr. Fletcher, Contracts 1041, 1083, 1085, 1095, 1113, 1114, 1116, 1132, 1137, 1161, 1168, 1218, and 1248 were the subject of one negotiation, it may be well, in order that we have a more complete picture, that those documents be identified so that

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when the witness is discussing those contracts we will know that he is discussing a complete negotiation with regard to all of those contracts, and not a discussion merely with regard to two of such contracts.

Mr. Dougherty: Well, it ought to be possible, Mr. Examiner, for us by a stipulation in some way to avoid just simply duplicating a lot of material that is all the same.

Presiding Examiner: Well, perhaps you and Mr. Fletcher can get together at the recess and agree upon some stipulation. That would be hepful, because then it would reduce the size of the record.

Mr. Dougherty: I am not trying to controvert his position that when an amendment was made an amendment was made with respect to all of these contracts, that all of those were under consideration.

What we tried to do was avoid encumbering this record with a lot of textual information.

Presiding Examiner: I understand that, but perhaps at the luncheon recess, or if you want to recess now you could reach a stipulation, and put it on the record.

Mr. Dougherty: Well, I think we might go as far as we can here without further recess.

Presiding Examiner: I prefer that.

Mr. Dougherty: In any event, it may be understood that any questions I ask we will supplement by these other contracts

1130

or any stipulation we can work out.

By Mr. Dougherty:

Q. Let us turn, first, to Contract 1218 which has been marked Exhibit 118, for identification.

Is that in this Bethany volume?

Now, let us see, was 1218 the original contract that was made respecting the particular properties that are described in Exhibit A to that contract, which is marked for identification as 118? A. That appears to be the original contract.

Q. Now, I notice that there are a number of other parties than Union Producing who are collectively designated as the seller. Why was that done? A. This contract covers the Lawless Unit, consisting of 695 acres. Each one of the parties named in the contract have an interest in that unit, and to get a contract on the full unit it was necessary that we make the contract with all of the working interest owners, and we did it by virtue of one contract.

Q. Now, what date was that contract entered into? A. February 25, 1949.

Q. And at that time the contract stated the price to be what amount? I think it is in paragraph 10. A. The price was 5 cents.

Q. And the period of the contract for which it was to

1131

run is apparently as stated in Article 15. It was what? A. It was five years.

Q. Was this unit a unit that had fully been brought into production some time before this contract, or was this a

substitute contract for any other previous contract? A. This appears like a new unit.

Q. Did you negotiate it? A. Yes, sir.

Q. And with whom did you carry on the negotiations? A. With Mid States and Union and Magnolia and Hansbro and Andrade.

Q. Well, was that done jointly, or did you do it with any group first, do you regall? A. I do not recall who we talked to first, but we talked to one of them, and then they got the word to all of the others, and then when we drew the contract they asked that they all be included in it.

Q. Now, going, then, to the document, the Contract 1248, which has been marked for identification as Exhibit 119, what is the date of that contract? A. The 20th of June, 1950.

Q. Did that contract cover newly purchased gas, or newly produced gas, I should say, that had not been purchased previously by United from Union? A. Yes, sir.

**1132**

Q. How does it happen that this one was made only with Union Producing, and there were no other parties in the production unit? A. Well, there can be two reasons. I do not know which one applied here. It either could be that Union owned all of the interest in the Wallace unit, 100 percent, or it could be that we made separate instruments with the other parties having an interest in the Wallace unit.

Q. Sometimes where there is a unitized area of acreage you do follow the latter practice you mentioned; that is, making separate contracts with each participant in the unit? A. We follow either way. If there is no particular objection, we will make one contract with all four or five operators. Sometimes the operators give us a separate contract as to our specific interest which we do. As long

as we get the full unit under contract we have no particular preference.

Q. And referring to Exhibit 119, for identification, what was the price provided in that contract? I think it is in Article 10 on page 11.

Mr. Fletcher: Mr. Examiner, I do not believe this can be stated. I think it ought to be read.

Presiding Examiner: Well, actually the contract speaks for itself. All that need be done is to call attention to the provisions of paragraph 10.

Mr. Dougherty: That is right.

If there is any objection, I would admit that my question



is not proper, because the contract is the best evidence. We can in brief refer to exhibits the same as we can to testify. I just thought that it would make it read a little smoother if we had in the transcript some of these things.

By Mr. Dougherty:

Q. Is the contract period stated in Article 15? A. Yes, for a term of five years.

Q. Now, then, those two contracts were amended

Presiding Examiner: Actually, Mr. Barnett, paragraph 15 provides for a contingency whereby it might extend for beyond five years; is that right?

The Witness: That is correct.

By Mr. Dougherty:

Q. The initial period was five years, and then it extends from year to year until cancelled? A. By either party.

Q. Now, then, Exhibit 117, for identification, which consists of two amendatory agreements—I note in that exhibit 117 the top agreement which was dated February 13, 1951, does have the two contract numbers 1218 and 1248 at the top, among other numbers, of course, so that that amend-

ment of February 13, 1951, was entered into to amend those two contracts; that is 1218 and 1248, as well as the others? A. Yes, sir. It amended Union Producing Company's portion of the unit, and we have other amendments amending the



other interest owners' portion.

Mr. Fletcher: May I ask a question there, please?

Presiding Examiner: You wish to ask a clarifying question?

Mr. Fletcher: Yes.

Mr. Barnett, in Exhibit 117, as it was handed to me, the amendment which is dated February 15, 1949, does not contain the numbers 1218 or 1248. Did that amendment apply to those two contracts?

Mr. Hendren: I believe you will find they were not in existence at that time, Mr. Fletcher.

Mr. Fletcher: Well, the question counsel asked was whether this referred to the two contracts, and it does not.

Mr. Dougherty: No, that was just the first one.

Mr. Fletcher: Just so that is clear on the record, Mr. Examiner, because the first amendment does not refer to either one of those contracts.

Mr. Dougherty: No, that is clear, and I used that 1951 date in my question, and it is apparent from the dates that both Exhibits 118 and 119 were entered into subsequent to February 15, 1949.

Now, Mr. Examiner, those are all of the photostats we have been able to—my attention is called to the fact that Exhibit 120 for identification has not been referred to.

By Mr. Dougherty:

Q. Mr. Barnett, in the Sugar Creek Field—

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Mr. Da Pra: Mr. Barnett, what exhibit are you referring to now?

The Witness: 106.

Mr. Da Pra: Thank you.

By Mr. Dougherty:

Q. Is the contract that has been marked for identification as Exhibit 120, which is Contract No. 3100, contained in the volume that Mr. Da Pra referred to? A. Gas purchase Contract 3100 is in that volume.

Q. Now, what we have had photostated, Mr. Barnett, as appers on the first part of Exhibit 120, is an amendment dated March 30, 1953. Then following that we have an amendment that was dated April 8, 1948, and then we have what presumably is the basic contract which was dated September 30, 1938.

Now, would you just check those and see if we have the essential parts of the contract that relate to price and change in price and term and any change in term? A. It looks like you have part of the contract. You have the instrument under part of which we are operating today as to price, but whether you have all of the essentials, I do not know.

Q. I see. Well, maybe over the noon recess you can look at that because we felt we had obtained that. I notice that this last amendment to Contract 3100, which is the first few sheets of Exhibit 120, the one dated March 30, 1953, is made only

1136

between Union and United, whereas the earlier contracts referred to this Triangle Drilling Company, and other companies. Can you explain that? A. Very easily. We have another amendment with Triangle who is A. J.

Hodges, and with Carter Oil Company, which we did not bring with us.

Q. As far as the Union Producing Company is concerned, this was the original contract made September 30, 1938? A. Your pile does not look as big as mine, so I am at a little bit of a loss.

Q. You certainly are more familiar with your pile than I am.

Can you tell us by looking in your own compilation of 3100 what is the original contract between Union and United Gas Pipe Line Company that was carried as contract 3100? A. Let me confess that this is not my pile.

Q. I see. A. Only the last amendment, when we were trying to get it down to something that we could understand, at least that I could understand.

Presiding Examiner: What is the question that is pending? I do not quite follow. I am lost in these two different piles. What is the question that is before this witness?

Mr. Dougherty: We have in our Exhibit 120, Mr. Examiner, as the first dated document, a contract which is taken from the



compilation from this Volume 106.

Presiding Examiner: The volume known as Exhibit 106?

Mr. Dougherty: Yes, which has on the last page of it a date, September 30, 1938. And the question was whether that was the original contract with respect to this gas purchase agreement that is carried as their contract 3100; I am just trying to get it straight in my own mind as to whether we have gotten the essential papers.

Presiding Examiner: Can you answer that question now, Mr. Barnett?

The Witness: Well, I have here an instrument dated December 20, 1929, and I will be perfectly frank to confess I do not know when the original instrument was signed.

Frankly, Sugar Creek is a pretty complex and complicated arrangement, and we thought we were very fortunate when we ended up in March 30, 1953, with all of the producers getting it into a price and term situation that we could understand.

By Mr. Dougherty:

Q. Well, now, suppose we start at the end and go backwards, then.

The first document that we have here in Exhibit 120, which is the amendment dated March 30, 1953, that is the current agreement you say under which you are presenting operating? A. That is right, sir.

Q. And that was made as of the date indicated?



A. Yes, sir.

Q. Now, were you familiar, or are you familiar with preceding agreements, the most recent preceding agreement which had been amended by this March 30, 1953, amendment, the purpose of my question being to see if we have got the right documents here?

That you will note, Mr. Barnett, is the one that is dated April 8, 1948. Now, that is after you were in charge or had to do with the gas supply. Do you find that? A. No, sir.

Q. I am pointing out to you in this compilation that is in the volume marked for identification as 106, this document that has the title "Amendment to Operating Agreement, Union Producing Company and United Gas Pipe Line Company, dated April 8, 1948, and effective June 26, 1947, increasing price to Union to 4 cents at wellhead."

Now, my question is, is that the effective operating agreement that you did operate under immediately preceding the marking of the March 30, 1953, agreement, and subsequent, of course, to the effective date which was stated as June 26, 1947? A. It appears to be so.

(1138)

Q. Now, then, going on back in your compilation, there are, as you say, a number of documents here which we did not have photostated, but we skipped from that one clear to the

1139

one that is loose. A. Well, that is the top one.

Q. So you are unable to throw any light at this time on this September 30, 1938, agreement which you have included in this? A. No, sir.

Mr. Dougherty: If the Examiner please, those are all of these contracts we have been able to get photostated and assembled last night, and Mr. Lippitt and Mr. Burt are over at the photostating place this morning working with these photostating people to assemble the rest of them that relate to the other, and, therefore, may I suggest, since it is now 12:22, that we might recess until 2 o'clock?

* * * * * * * * * *

1140

Presiding Examiner: The hearing will please come to order.

Mr. Da Pra: Before you proceed, may I ask a few clarifying questions?

Presiding Examiner: Go ahead.

Mr. Da Pra: With respect to Exhibit 117, Mr. Barnett, which covers gas purchase contract 1041, could you tell us in what exhibit number that appears?

Mr. Hendren: What volume it appears in, Mr. Da Pra?

Mr. Da Pra: Yes.

Presiding Examiner: To whom was that question addressed?

Mr. Da Pra: To Mr. Barnett.

The Witness: First, let me see the exhibit.

Mr. Da Pra: I thought you had the exhibit before you.

The Witness: No, I do not have the volumes. Which one are we looking for?

Mr. Da Pra: It is contract 1041, Mr. Barnett.

Presiding Examiner: What do you want to find out, Mr. Da Pra?

Mr. Da Pra: I want the exhibit number.

Presiding Examiner: Where all of the various contracts are?

Mr. Da Pra: Yes.

Presiding Examiner: You might ask him the question.

**1141**

Mr. Da Pra: That is what I am doing. You see, the first contract is 117.

Presiding Examiner: You want where 1041 is, where 1083 is, all of these?

Mr. Da Pra: No, there are just about two or three, I believe.

The Witness: That is Exhibit 104.

Mr. Da Pra: And with respect to Exhibit 118, insofar as it relates to gas purchase contract 1218?

A. Exhibit 105.

Mr. Da Pra: And with respec to gas purchase contract 1248 and Exhibit 119?

The Witness: Exhibit 105.

Mr. Da Pra: Thank you very much, Mr. Barnett.

Presiding Examiner: All right, are you through now, Mr. Da Pra?

Mr. Da Pra: Yes.

Mr. Fletcher: Mr. Examiner, I should like to make a motion, but may I ask, first, is Mr. Dougherty delayed?

Presiding Examiner: Mr. Dougherty, I understand, will not be here this afternoon.

Is that correct?

Mr. Hendren: That is correct. He went back to New York. He will be here tomorrow.

(1141)

Mr. Fletcher: Mr. Examiner, United would like to move to

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strike Exhibits 111 through 120, inclusive, insofar as they purport to be separate and distinct exhibits, and to move to require Mississippi to offer in evidence Exhibits 100 to 110, both inclusive, and for grounds——

Presiding Examiner: Excuse me, just a minute, before you go any further, Mr. Fletcher.

May I point out none of these exhibits have been offered in evidence?

Mr. Fletcher: Well, I am aware of that, Mr. Examiner. They have been identified.

Presiding Examiner: Yes.

Mr. Fletcher: But the procedure being followed, as I understand it, and to which my motion is directed, is that it is plainly evident, as I gather it this morning, that it is not the purpose of Mississippi to offer in evidence in their entirety Exhibits 100 to 110, inclusive. It is their purpose to identify them solely as the sources of certain exhibits beginning with Exhibit 111, which they do intend now to identify and later to offer, and the only use, as I gather it from their procedure this morning for Exhibit 100 to 110, for identification, both inclusive, is merely to show that the subsequent marked exhibits are identifiable as coming from the first numbered Exhibits 100 to 110, which were produced by United pursuant to the subpoena.

Now, that was my understanding this morning. And I

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object to that procedure, and I want to move to strike the exhibits marked for identification 111 to 120, both inclusive, and the grounds of my motion are as follows:

In the first place, Mississippi River applied for a subpoena duces tecum, and in the written application for that

subpoena they said, and I quote enough of it at diverse places in the motion to identify the scope and purport and intent of that motion, Mr. Examiner. They said in the first place that they wanted the subpoena to the Witness Charles Barnett, "respecting the negotiations between United and Union leading to and culminating in the execution of the gas purchase contracts between said companies effective in 1950 and amendments thereto since January 1, 1951."

Then in paragraph 1 of that Motion they aver that Union Producing Company is a wholly-owned subsidiary of the United Gas Pipe Line Company, and then in parentheses they have United Gas Corporation, whatever that means, and then they say "That since January 1, 1951, the prices for natural gas sold to United by its affiliate and subsidiary Union have been increased from time to time to the date hereof unjustly, unreasonably, and absent arm's length bargaining, between the two affiliated corporations."

And other following allegations.

In paragraph 2 they set up that 60 percent of the cost of service in Exhibits 77 to 81, and I lump them thus because they



are the totality of the exhibits which the Staff offered, and which United adopted, was the cost of natural gas.

Then they make the allegation of fact that United's purchases from Union was merely one quarter or one fourth of the purchases of gas.

Then they allege that there is relevancy, and they set up that "The Applicant expects to prove by the evidence requested that such price increases were not reasonable, just, and the result of arms length bargaining, and that the reasonable and just prices for the sales of natural gas by Union to United are less than the contract prices used in determining the cost of purchased gas used in the cost of service herein."

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That is paragraph 3.

They then, in paragraph 5, identify what they mean by ne documentary evidence, and they say: "The documen- ary evidence herein requested to be produced at the hear- ng are the gas purchase contracts existing between United nd Union for United's Monroe, Shreveport, Dallas, Beau- mont, San Antonio, Houston, and Southwest Louisiana listricts, effective in 1950, and all agreements amenda- ory thereof from January 1, 1951, to the present."

Now, the Commission ordered such a subpoena issued nd at great trouble and expense United prepared the naterial in 11 volumes.

Now, the motion was directed, Mr. Examiner, to the totality

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of the contract relationship. There was no allegation that applied to any infinitesimal portion of it, but to all of it in its entirety, and in the course of the record on more than one occasion the charge was made that Union and United sat down around a table together to increase the money paid to Union for the purpose of requiring Mississippi to pay increased prices.

Now, we come here and we produce these instruments. They now come with fragments of them, selected fragments of them, if the Examiner please. I assume that in the fash- ion of all lawyers they have selected those fragments which they believe and hope will assist the particular charges that they make.

Now, I want to make this statement before I put the next ground into the record: I do not believe that Mr. Dougherty would knowingly or willingly, in any fashion, mislay or misuse any of these papers. But we went to considerable trouble and expense, and we bound these volumes together so that they could be identifiable.

Now, in delivering them to a photostater for the purposes

of those fragments selected, they have been taken apart. Those portions photostated are now lying there loose, just pushed in loose. There is no way to know and tell whether what was there originally is there now.

So that the possibility of loose and misplacement is large and at least probable.

Now, in order for the Commission to determine the picture



as against the charge made, the only proper procedure is that evidence, and they call it evidence, which they have here subpoenaed, and their declaration is that that evidence will reflect.

Now, whether that evidence reflects or not is, of course, for the Examiner and the Commission to determine. They can make their contentions and we will in good course make our contentions, but to have a series of exhibits, and, I believe, Mr. Examiner, that there are over 4,000 pages, or at least 4,000 pages in all of the contracts produced, and to have those produced and then simply identified and fragments lifted out of them, and out of the context, it either is a confession of insufficiency of the Motion, and the whole matter ought to be quashed, or the whole matter should be there, and then the Commission and this Examiner can determine both the propriety and the basis for the charge and for the motion, as well as what the evidence itself reflects, and I therefore object to the procedure being followed.

I move that Exhibits 111 to 120, both inclusive, marked for identification, be stricken, that we proceed upon the examination of this witness by Mississippi who subpoenaed him here to determine what the negotiations were, and what the reasons were that led to each and every price increase, and that the entire matter be set there, and the

Commission then, and this Examiner then, will be in a position to determine what prices were

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increased, when they were increased, and what the entire purport of the matter is, and they will have some intelligent and reasonable basis to determine the issues.

Now, for illustration, this morning in Exhibits 111 and 112, those two particularly, I notice right in front of me, the last amendment offered is an amendment dated July 18, 1947, so that by January 1 of 1950 the prices effective in those two contracts, and those two amendments, had been in effect nearly three years before January of 1950, and the evidence that they have subpoenaed shows that there has been no change in that price since 1947. So that is a part of the entire picture, Mr. Examiner, and I think that the only way we can properly judge what the situation is, particularly in the light of the charges, is that that which they have subpoenaed should be here in this record, and I therefore move that exhibits identified be stricken, that exhibits 100 to 110, marked for identification, be carried forward, and that Mississippi River proceed with its examination of the witness Barnett upon the basis of the motion for which the subpoena was issued.

Presiding Examiner: I will hear from Mississippi.

Mr. Hendren: Well, Mr. Examiner, this is the first time that I have ever heard of the opposition trying our case for us.

The subpoena was issued and the grounds set forth in the subpoena were set forth therein to show the materiality of this

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evidence that now has been brought before the Commission for Mississippi to go over to see whether or not they wanted to offer it in this record.

I have subpoenaed lots of evidence that I did not use, and probably will in the future subpoena lots of it that we won't use.

Now, the subpoena did show the materiality of the evidence because the Federal Power Commission granted the subpoena.

Presiding Examiner: You mean the application?

Mr. Hendren: The application for the subpoena, yes.

The subpoena that was issued was for Mr. Barnett to bring these particular documents here, which have purely been identified up to this time, and none of them have been offered in evidence.

Now, if Mr. Fletcher wants to go into all of the negotiations and things that went behind these amendments to the contracts which show that the price of gas was increased, under long-term contracts from 4 cents and 3 cents up to 7, 8, 9, and 10 cents, without any provisions in the contracts which would allow those increases—there are no escalator clauses in them that I have found—then he could bring that out in his case, but I doubt seriously if this Examiner would have us present Mr. Fletcher's theory of the case at this time, and we should proceed in an orderly fashion, it seems to me, to put in what portion of these contracts we think are pertinent to

**1149**

Mississippi's position in this case. Then if Mr. Fletcher wants to put the rest of them in, he can. We are going to protect these photostatic copies. I do not believe the subpoena said anything about photostats, but we have accepted the photostats.

We think that is a practical way to get them here. We are not going to lose any of them on purpose. Naturally, we have had to take them out of the——

Presiding Examiner: I take it that you can assure us

and Mr. Fletcher that all of the exhibits produced by United here are still here?

Mr. Hendren: They are still here, if it please Your Honor.

Presiding Examiner: And that you will restore them to the state in which you received them?

Mr. Hendren: Yes, sir, we will, and we would like to have the opportunity to go ahead and have these contracts which we think are pertinent identified.

Now, if the Examiner thinks some other contracts that are referred to in these particular amendments or contracts, like you did this morning thought should be photostated or identified, we are going to do that for Your Honor, because we doubt that we will be able to stipulate that they were the same in each particular. They were the same in some things, and perhaps different in others. Then we will be glad to have

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those photostated during the recess during the night so we can proceed orderly here to put these exhibits in for identification.

Then if Mr. Fletcher wants to make a speech, and object to them at the time they are offered, we will meet that objection at that time.

Presiding Examiner: All right.

Now, the Staff: Does the Staff have a position on this motion?

Mr. Da Pra: Well, I have been a bit disturbed by the procedure, and probably it is because I still do not know what Mississippi's position is with regard to the gas purchase cost which the Staff determined to be reasonable for United Gas Pipe Line Company.

Now, we brought our witnesses here. They testified as to the cost of service, and the rate base for United Gas Pipe Line Company. Part of that cost-of-service was a

sum of money which the Staff deemed reasonable for United's gas purchase costs.

As I understand Mississippi's position, they took no issue with respect to the gas purchase costs allowed which United purchased from said independent producers.

Presiding Examiner: Well, I do not understand it that way.

Mr. Hendren: We objected all of the time. I believe we asked for the back-up time at the time Mr. Epperson testified as to where he got his gas price.

**1151**

Presiding Examiner: The Staff made available to Mississippi, as I understand it, all of his working papers and anything that they had. If I understood the situation correctly, I think the record will show that Mr. Dougherty at one time stated that he did not think it would be proper to go into the costs of producing gas by these independent producers, and I understand that is your position.

Now, I also gather, and I hope that we have this straight in the record, that Mississippi has no objection to the amounts allotted for gas purchase costs to United where such gas was bought from independent producers. Is that correct?

Mr. Hendren: Arms length transactions, not Union Producing Company.

Presiding Examiner: Well, as far as I know, as far as this record shows, there has been no question raised by Mississippi that contracts other than those where gas was purchased from Union were contracts where gas was obtained as a result of arms length bargaining, so there is no question of the cost of gas from persons other than Union, as far as Mississippi is concerned.

Is that correct?

Mr. Hendren: We cannot go quite that far at this time.

(1151)

Presiding Examiner: Well, what is your position on this? I think we ought to know so the record will be clear.

Mr. Hendren: The prices in the arms length transactions, as you might call them——

1152

Presiding Examiner: Well, what do you mean by arms length transactions? Are those transactions with persons other than Union?

Mr. Hendren: Other than Union, at times controlled the escalation of Union prices. At times the prices they escalated on the Union contracts caused the escalation in other contracts, so I cannot tell you that we are not interested in them because they are interrelated.

Presiding Examiner: Well, that is not my question to you, sir. My question to you is a very simple one: It is one which would be helpful to a determination of the issues here because it would narrow the issues, if I understand your position correctly.

It is simply this: Where gas has been purchased, natural gas has been purchased from any one other than Union by United Gas Pipe Line, are you objecting to the figures produced by the staff in the exhibits received here regarding those costs, and, if so, on what grounds?

Mr. Hendren: I believe the record will show we have not objected to them as to cost. We have objected to some of them for failure to file.

Presiding Examiner: Yes, I unders[illegible] your objections relating to 174, but aside from that do you have any objections to the costs as carried in the Staff's cost-of-service for gas purchased from persons other than Union?

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Mr. Hendren: I will say not at this time.

Presiding Examiner: You do not have any mental reservations about this, do you?

Mr. Hendren: Well, I am not going to speak for Mr. Dougherty, because he is not here.

Presiding Examiner: Well, you are speaking for Mississippi, not Mr. Dougherty. You are representing Mississippi, and I want to know Mississippi's position.

Mr. Hendren: Well, we would have no objection to them as to prices.

Presiding Examiner: Now, you go ahead with the rest of your statement.

Mr. Da Pra: That was my understanding of what had transpired, and I assumed that to be so because we had brought our witnesses in here, and made them available as to examination and cross-examination by Mississippi, and nothing was done in regard to those witnesses respecting the prices for gas which the Staff allowed, which United purchased from independent producers.

Now, I took it from their motion that they were objecting to the price which the Staff allowed for the purchases by United from Union Producing.

Now, I am going to wonder now whether by this piecemeal method that they had, having obtained from United all of the contracts with Union for the period covered by the request, and

**1154**

that they have with them now, or have been given all of the contracts presently in effect between United and Union—if I can recollect, there was one district that did not have contracts in 1950 and, therefore, they have not supplied it—now, out of that entire volume of contracts, they are, as I see it, pulling out particular contracts.

Now, the point that is arising in my mind is, is Mississippi by this method giving to the Examiner and to the Commission the understanding that they object only to the prices which are included in those contracts?

Presiding Examiner: When you say "which you in-

cluded," you mean which the evidence presented heretofore had included within?

Mr. Da Pra: That is right. Out of the entire contracts between United and Union, they are presenting evidence relating only to some of those contracts. Now, if their objection for the Staff's allowance of costs, only goes to those particular contracts, they should make that known to us, make it known to the Examiner, but if they object to all of the costs that we have given United for its purchases from Union Producing, then I would think they would be under an obligation to present in data or some fashion that mass of material which United has given, and was requested by the subpoena.

Presiding Examiner: Well, as I understand the situation, it is this, and I hope Mississippi will correct me:

1155

As I understood, Mr. Dougherty's statement earlier today, or yesterday, he was subtracting from the documents produced here by United, pursuant to subpoena, certain documents. As I understood it, it was Mississippi's claim that these documents were illustrative of other documents within that file now, of course. Whether they are or not, I do not know. There has been no proof, I might say that they are so illustrative of all of the other documents within the file, and that, as I understand it, is in general Mr. Fletcher's objection to this manner of proceeding, that there is no proof that they represent actually everything that is contained in the documents produced by United and, therefore, that their receipt in evidence, if and when received, would present an incorrect picture rather than an accurate picture, of what the facts are, regarding United's purchases from Union, and may present a somewhat distorted picture, and certainly one on which the Commission should not rely, if I understand Mr. Fletcher's argument.

However, the thing that disurbs me about this situation

is this: I am inclined to think that Mr. Fletcher's objections to these documents are premature for this reason: I do not think that I have any right to strike from evidence that which is not in evidence. It seems to me that if and when the time comes that Mississippi offers any part of the documents which it has now identified, if at that time objection is made to their receipt in evidence, unless other documents are also received

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in evidence, I think that would be the appropriate time, rather than now.

I do not mean by this statement to indicate that I am making any ruling in regard to the motion made by Mr. Fletcher, because I think that also would be premature, because no such time has arrived.

Mr. Fletcher: Mr. Examiner, I shall conform to that ruling, and I shall renew the motion, both my motion and in the form of objection, in accordance with the observations just made by the Examiner.

However, the thing was so disturbing to me after what occurred this morning that during the noon recess I got this Motion out and reviewed it, and it seemed that I ought promptly and diligently to get this thing on the record, and I realize there is a distinction between a marking for identification and a receipt in evidence, but still I also think that I would be derelict had I sat quietly and by that silence perhaps have acquiesced in a procedure, and Mississippi then might with some equity have said to me, "You should have spoken up sooner. You should not have let us gone forwarder under the mistaken belief that there was no objection to this procedure."

So I did make the motion, and I will stand on it, Your Honor, but I recollect what Your Honor has to say, and I will renew it, both my motion and objection.

(1156)

Presiding Examiner: Yes. Well, at this time I think your

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motion is premature, and it will be denied.

You may go ahead, sir.

By Mr. Hendren:

Q. Now, Mr. Barnett, do you have the volume before you applicable to the Cotton Valley fields, in Volume 106, which has been marked for identification? A. Yes, sir.

Mr. Hendren: I would like to have marked for identification a document marked in the upper lefthand corner 858, styled "Amendment to Gas Purchase Contract," dated April 29, 1940, United Gas Pipe Line Company, buyer, relative to Cotton Valley Field of Webster Parish, Louisiana, consisting of——

Mr. Fletcher: Since these matters have been taken out of the volume, might you submit to the witness the exhibit you propose, so he can compare it with the documents he prepared, and then we will have some knowledge in the record that the documents produced are the same as those prepared for the record.

Mr. Hendren: I want to have this marked first as Exhibit 121, Mr. Examiner.

Presiding Examiner: You might complete your description. I understood you described the first page of the exhibit, and I believe the exhibit reads on the second page that it was entered into on August 29, 1952.

Mr. Hendren: That is correct.

1158

Presiding Examiner: And it purports to be a contract between Union Producing Company and United Gas Pipe Line Company and is—how many pages?

Mr. Hendren: Six pages, and then there are——

Presiding Examiner: It consists of 11 pages in its entirety, I believe, and that will be marked for identification as Exhibit 121.

(Amendment to Gas Purchase Contract of April 29, 1940, dated August 29, 1952, between Union Producing Co. and United Gas Pipe Line Co., consisting of 11 pages, was marked Mississippi River Fuel Exhibit No. 121, for identification.)

By Mr. Hendren:

Q. Now, Mr. Barnett, I hand you what has been marked for identification as Exhibit 121. Is that the same as the material furnished in the volume which has been marked as Exhibit 106? A. That is the photostat, but aren' there more documents with it?

Q. Not as to that particular instrument. A. But this is an amendment. There ought to be an original contract somewhere.

Presiding Examiner: What has been marked as Exhibit 121, Mr. Hendren, is a facing page on which are written the words "amendment to gas purchase contract dated April 29, 1940," and the second page of the document is headed "Amendment to gas



purchase contract," and that says it was entered into on August 29, 1952, and that is followed by the notary's stamp.

Mr. Hendren: May it please the Commissioner, we have been unable to find that original contract in the contracts furnished to us. There is a reference to a contract of 1940. The subpoena asked for contracts, I believe, 1950 and thereafter, and amendments thereto, and I have not been able to find that particular contract.

However, this one has recitations in it back to a previous contract.

Presiding Examiner: I see. Well, you can identify that

as Exhibit 121, if you so wish. This will be marked for identification, and what will be done on it later, I do not know at this time.

By Mr. Hendren:

Q. And that exhibit, Mr. Barnett, Exhibit 121, is an amendment to a contract between United Gas Pipe Company and Union Producing Company. That contract is referred to on the second page of that exhibit; is that right? A. That is an amendment to that contract.

Q. Mr. Barnett, would you look through what has been marked Exhibit 106, which contains a portion of the Cotton Valley contracts, and tell me whether or not the contract referred to in that exhibit is in Exhibit 106? A. I do not know. The thing has been unbound. I would



be glad to look.

Presiding Examiner: Can you tell from examining Exhibit 106 whether that contract identified as Exhibit 121 was a part of what was originally identified as Exhibit 106?

The Witness: Mr. Examiner, we photostated all of our file and put it in here. Now, the only thing I am finding is the amendment. Now, whether or not we inadvertently left it out, or whether or not it was lost, I cannot tell you because I do not have the bound volume.

Presiding Examiner: Well, I do not know whether you inadvertently left it out. The subpoena did not call for contracts before 1950.

The Witness: But we would have put in the contract in effect as of 1950, and this amendment did not occur until 1953, so there should have been another instrument, or several instruments, in the file.

Mr. Da Pra: But you do not know whether that was in the material you supplied Mississippi or not?

The Witness: I cannot tell because this has been un-

bound. I could have told very easily if it had not been unbound, but we thoroughly checked each and every contract to be sure we were complying with the request, and had a contract in here that set out the price in 1950 and then carried it forward with all of the instruments.

By Mr. Hendren:

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Q. Mr. Barnett, I will refer you to page 4 of that Exhibit 121.

Mr. Fletcher: Mr. Examiner, I am going to object to any questions on this unless the entire contract is here.

Mr. Hendren: I believe, Mr. Fletcher, this will clarify the point he raised.

Presiding Examiner: I think we can have Mr. Hendren state his question. When he finishes the question then it might be appropriate to object.

By Mr. Hendren:

Q. I refer you to page 4 of that exhibit, Mr. Barnett, and does that page 4 contain a reference to a portion of the preceding contract, Article 7, as to price in the preceding contract, the contract that preceded that amendment? A. Yes, sir.

Q. And then that same page sets up the prices that are applicable by that amendment to the contract; is that correct? A. That is right.

Mr. Fletcher: Now, Mr. Examiner, I move to strike those two questions and answers, and the part referred to on page 4 as it is very eloquent of why the entire matter has got to be here. I read "that portion of the next-to-the-last subparagraph of section (b) of Article 7," which reads as follows:

"Provided, however, that if the price so determined is less than 6 cents, then the price to be paid hereunder during

the period in question shall be 6 cents for each 1,000 feet."

Now, of course, we do not know what the method of provision was, or what the method of determination was, or whether it was six feet.

Presiding Examiner: Six cents.

Mr. Fletcher: Then it shall be deleted in its entirety, and the following shall be substituted therefor, and there is another proviso substituted therefor, and the point of it, Mr. Examiner, is that it is completely meaningless.

Mr. Hendren: I think the document will speak for itself.

Presiding Examiner: Yes, documents speak for themselves, but the trouble with the situation is that the document which would speak for itself does not seem to be here.

Mr. Hendren: Well, as I explained, I did not find it, Your Honor, in the documents that were furnished.

Presiding Examiner: I do not know whether it was here or not, Mr. Hendren. I know no more about this than you do, as to what was produced. I did not examine these exhibits, but I take it that the purpose of your question was to show a difference in price between one contract and another contract, and I take it the point of the objection is that you cannot show what the difference is because what you have is a fragment rather than the whole, and the fragment is obscure.

The objection is well taken.

Incidentally, if I recall correctly, the subpoena did not



require United to bring in contracts except those that were effective in 1950.

Now, I do not know whether this contract which is referred to in this exhibit was effective in 1950 or not.

Mr. Hendren: We are not objecting to it, Your Honor.

Mr. Da Pra: I thought the witness stated it was.

Mr. Fletcher: I think it was.

Presiding Examiner: Well, that may be, but you cannot tell it from the document.

The Witness: Yes, it was effective in 1950 because we have brought it forward.

Presiding Examiner: I see.

The Witness: Mr. Examiner, I find a portion of that contract in the back.

Presiding Examiner: You find the contract to which reference has been made?

The Witness: Yes.

Presiding Examiner: Well, where is that? Is that within the confines of Exhibit 106?

Mr. Hendren: Yes, sir.

Presiding Examiner: Now, perhaps you might be able to put your question, Mr. Hendren.

By Mr. Hendren:

Q. Now, Mr. Barnett, you have pointed out in Exhibit 106, the original contract which was referred to in Exhibit 121,



dated April 19, 1940. Do you have that before you? A. Yes, sir; it being part of Exhibit 106.

Mr. Fletcher: May I ask a question?

Is the complete 1940 contract there, or just a portion of it?

Mr. Hendren: It looks complete to me, Mr. Fletcher. But I will have to have Mr. Barnett look at it.

Mr. Fletcher: Does it purport to be complete? Then you won't be charged with saying it is not complete.

May I look at it?

Presiding Examiner: Do you want a few minutes to look at this, Mr. Fletcher?

Mr. Fletcher: Yes, sir; please.

Presiding Examiner: We will take a five-minute recess, and you can look at it with Mr. Hendren and the staff.

(Whereupon, at 2:40 p. m., a recess was taken until 2:50 p. m. of the same day.)

Presiding Examiner: The hearing will please come to order.

You may continue.

Mr. Fletcher: Mr. Examiner, I have checked in accordance with the permission you gave me, and I do find what I believe to be the complete contract.

Now, it again impresses me. I am really quite disturbed about this thing, procedurally. It looks to me that if there is any proper way to do it we should have a ruling from the Examiner

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on the procedure to be followed, and by that I am addressing myself again to the same subject matter that was the subject matter of the motion to strike.

It looks to me like we are getting into a morass.

Presiding Examiner: I have been thinking about what you said before, and this is one of the things that strikes me: We have here a series of contracts or amendments to agreements, and so forth, which have been presented. As I understand Mississippi's theory on this, it is that they are representative of all of the contracts, that when they get through with all of these various exhibits they will be representative of the entirety of the contracts between United and Union.

Is that correct?

Mr. Hendren: Well, just certain ones that we feel the prices were changed, Your Honor.

Presiding Examiner: You have presented, I assume, contracts where prices were changed?

Mr. Hendren: Yes.

Presiding Examiner: And at some point you will want to introduce those in evidence as proof of some kind that the prices agreed upon between Union and United were improper in some way, that they do not reflect reasonable prices obtained by Union.

I might point out that it seems to me, and I am being very frank as I said here as I always intend to be in these proceed-



ings, that if you were right, and I do not say you are, it might prove a fairly small percentage of the contracts between Union and United may be subject to some criticism, so small a percentage as to be miniscule, and I do not know how you can establish by putting in a few exhibits that they are representative of the entire course of conduct between the two parties.

So it seems to me before you get through on this theory of the case you may prove nothing. I do not know.

Mr. Hendren: That may be.

Mr. Fletcher: It seems to me, Mr. Examiner, that by this process of excerpting fragments we are getting down into a morass so far as the record is concerned, and the record is becoming more confused by the exhibits and by the line.

Presiding Examiner: Well, I will tell you, Mr. Fletcher, all that happened so far—and I am conscious of the reasons why you have made this motion—all that has happened so far is you are going to have a series of exhibits marked for identification.

Would I be correct, Mr. Hendren, if I were to assume that this batch of exhibits, which have not yet been marked for identification but which have been handed to me, would represent about all of the contracts that you intend to identify?

Mr. Hendren: No, we will have some more.

Presiding Examiner: How many more will you have, approxi-

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mately?

Mr. Hendren: I imagine about an equal batch to the batch you have before you, and then we have some more being photostated now.

Now, what we tried to do—off the record?

Mr. Da Pra: I would like to have it on the record.

Mr. Hendren: I was trying to get the last contracts which the Staff said they used, and try to have the contract prices that were in effect of July of last year, June or July, and we tried to pick those portions of the amendments to contracts that state right in them they are amending preceding contracts.

We have not tried to go clear back to 1929. Some of this relationship went back that far. I think we will get along faster this afternoon—this morning he had a reference to several contracts amended by one amendment; we have agreed to supply those for the record.

I am sorry we did not photostat that Ohio contract, but I believe after we get through—we may proceed and make better time, and then if we have nat shown the relevancy of this material, or the materiality, of course an objection could be made at that time.

Presiding Examiner: I take it you have possibly 40 additional exhibits that you will want to identify?

Mr. Hendren: I imagine that is right.

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Presiding Examiner: Forty or fifty, which will take a lot of the record.

I do think this: Whether your theory be right or wrong, and I am not in any position at this point to evaluate your theory, I would have to think about it. These papers have not even been put in, so I am not in any position to express any position about these papers. I think I would

have to identify them, and then if and when the time came that you wanted to offer some of these exhibits, at that time I think we will take up the question as to their materiality, their relevancy, and whether they should be admitted in evidence.

So I think you should go ahead and identify these exhibits.

Mr. Hendren: If you would like for us to, Your Honor, we could bind these up into batches.

Presiding Examiner: I do not think that is necessary. I think the thing to do is to go right ahead as expeditiously as we reasonably can, go ahead and identify these exhibits, and then I assume after you have all of these exhibits identified you intend to question the witness. Is that your general approach?

Mr. Hendren: That is right.

Presiding Examiner: All right.

Mr. Hendren: Now, I would like to have identified as Exhibit 121—you have already had 121.

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No. 122, excuse me.

A document marked "Reference to contract 1095," being a letter from United Gas Pipe Company, dated February 13, 1951, to Union Producing Company, Shreveport, consisting of two pages.

Could I have marked as Exhibit 122?

Presiding Examiner: Yes; I think you noted the date February 13, 1951; did you not?

Mr. Hendren: That is right.

Presiding Examiner: That will be marked as Exhibit 122, for identification.

(The letter dated February 13, 1951, to Union Producing Co. from United Gas Pipe Line Co., marked 'Reference to Contract 1095," was marked Mississippi River Fuel Exhibit No. 122, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I hand you what has been marked for identification as Exhibit 122. Will you look in Exhibit 106 and see if that is a photostatic copy of the document identified by the number 1095?

If you cannot find thatfi we will go on to another exhibit and withdraw that. A. Well, it is missing from my original file.

Q. It is here some place.

Presiding Examiner: Excuse me, Mr. Hendren, isn't there

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some——

Mr. Hendren: I had them all right here.

The Witness: Here it is.

Presiding Examiner: What is on my mind is simply this: Isn't there some quicker way that we can get these identified? Perhaps you can arrange possibly with United in some stipulation to these exhibits, have them marked for identification, and get them into the record.

Otherwise, this is going to take a week to get them into the record. I am not finding any fault with you, Mr. Hendren. I appreciate you are working under a considerable time burden, and doing the best you can, and doing very well, but I would like to expedite this in some way.

Mr. Fletcher: I might make this suggestion on the expedition, Mr. Examiner: For instance, this Exhibit 122 on its face shows that it is not a complete set of the contract. It refers on its face to several other amendments as well as to the original.

Now, of course, I am objecting on the same ground, you understand, but my point is that as a matter of expedition, if the record can reflect that I do so object, then without waiving any of my rights, it seems to me he can ask the witness to check only the particular instrument, if he wants

to get at it in that fashion, and that ought to go forward much quicker. Then we would just proceeding on that theory——

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Presiding Examiner: Apparently he wan's to relate it back to the instruments that preceded it, if I understand it.

Is that correct?

Mr. Hendren: Well, if we are given an opportunity to do it.

Mr. Fletcher: He should, and should offer them.

Mr. Hendren: If Mr. Fletcher will just be seated, we probably can get along a little faster, and have these documents identified.

Mr. Fletcher: I do not think you are getting anywhere with just a partial fragmentation.

By Mr. Hendren:

Q. Have you found the document, Mr. Barnett? A. I have found the document.

Q. And Exhibit 122, for identification, is a photostat of a letter which is in the file pertaining to contract 1095? A. It is a photostat of a letter in the file on contract 1095, but it is not the entire contract 1095.

Q. But it is a photostat of the letter? A. Of a letter in contract 1095.

Mr. Da Pra: May I ask a question?

Presiding Examiner: Very well.

Mr. Da Pra: Mr. Barnett, what is the exhibit number of that volume in which appeared the photostat of the letter which is Exhibit 122, for identification?

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The Witness: Exhibit 106.

Mr. Da Pra: 106. Thank you, Mr. Barnett.

Mr. Hendren: Now, I would like to have next marked for identification as Exhibit 123 a gas purchase contract,

reference to Contract 2632, consisting of 17 pages, being between Union Producing Company and United Gas Pipe Line Company, and dated May 25, 1951.

By Mr. Hendren:

Q. Now, is the copy of that contract found in Exhibit 103, Mr. Barnett? A. Yes, sir; but there are other documents pertaining to 2632.

Mr. Fletcher: I make the same objection, Mr. Examiner. In the light of all of the exchange that has gone on on 122, if I did not make the objection I now want to object to 122 being marked for identification, and 123 being marked for identification, because they both show on their face that they do not correctly represent in their entirely the contracts for which numbers they bear on their face.

Presiding Examiner: I think your objection would be good if and when they are offered, but I do not think that it is a proper objection to marking a document for identification. The objection is overruled.

We have marked for identification the February 13, 1953, letter as Exhibit 122, and we will mark as Exhibit 123, for



identification, a document entitled "Gas Purchase Contract," on which the numer 2632 appears in the right-hand corner of the first page, the upper part of the first page, and which purports to have been executed on May 25, 1951, consisting of 17 pages. That will be marked Exhibit 123, for identification.

(Gas Purchase Contract, No. 2632, dated May 25, 1951, was marked Mississippi River Fuel Exhibit No. 123, for identification.)

Mr. Hendren: Now, I would like to have marked as Exhibit 124, for identification, being an amendment to gas purchase Contract No. 2096—

Presiding Examiner: Excuse me, Mr. Hendren, before we leave Exhibit 123, I have before me in the documents which you gave me an amendment to gas purchase contract, numbered 2096. That has not been marked for identification.

Mr. Hendren: That is what I am asking to be marked, sir.

Presiding Examiner: Now?

Mr. Hendren: Yes, sir.

Presiding Examiner: All right. That you want marked as Exhibit 124, for identification?

Mr. Hendren: That is correct.

Presiding Examiner: Will you now describe it.

Mr. Hendren: That is a document entitled "Amendment to Gas Purchase Contract, 2096," consisting of four pages, and attached thereto is a gas purchase Contract 2096, consisting of five pages.

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Presiding Examiner: I have four pages

Mr. Hendren: Four pages is correct.

Presiding Examiner: Making a total of eight pages?

Mr. Hendren: Yes.

Presiding Examiner: That will be marked Exhibit 124, for identification.

(Amendment to Gas Purchase Contract, No. 2096, consisting of eight pages, was marked Mississippi River Fuel Exhibit No. 124, for identification.)

By Mr. Hendren:

Q. Now, Mr. Barnett, I hand you what has been marked for identification as Exhibit 124. Do you find that amendment to the gas purchase contract in volume 106, which you have before you? A. No, sir.

Mr. Hendren: Well, we will withdraw that exhibit.

Presiding Examiner: 124, you wish to not have that marked for identification?

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Mr. Hendren: I can withdraw it or leave it marked for identification.

Presiding Examiner: That is up to you.

Mr. Hendren: I would like to withdraw it.

The Witness: I would like to find it.

Mr. Fletcher: We do not want this document lost.

Presiding Examiner: What is Mississippi's position?

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Do you want Exhibit 124 marked for identification, or not?

Mr. Hendren: I cannot find the back-up material to it. We can leave it marked and come back to it.

Presiding Examiner: That is your choice.

Mr. Hendren: I expect to keep the record straight we better leave it marked.

Presiding Examiner: Very well.

Mr. Hendren: I would like to have marked for identification as Exhibit 125 a document entitled "Amendment to Gas Purchase Contract 1143," which amendment consists of eight pages, and gas purchase Contract 1143, which contract consists of 21 pages.

Presiding Examiner: Twenty-nine pages in all; is that correct?

Mr. Hendren: That is correct.

Presiding Examiner: And that will be marked Exhibit 125, for identification.

(Amendment to Gas Purchase Contract 1143 and Gas Purchase Contract 1143, consisting of 21 pages, were marked Mississippi River Fuel Exhibit No. 125, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will hand you what has been marked for identification as Exhibit 125. Do you have before you the original photostate of the contract of that exhibit?

A. Yes, sir.

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Q. And is the exhibit marked for identification No. 125 a photostat of the original contract, the amendment, and the amendment to the gas purchase contract, Contract No. 1143? A. It appears to be.

Q. And that is between A. J. Hodges Industries, Inc., and Union Producing Company, and United Gas Pipe Line Company, as far as the amendment is concerned? A. Right.

Q. And that applies to gas purchased from Sligo Field? A. Yes, sir.

Mr. Fletcher: The same objection and exception. I assume the ruling is the same?

Presiding Examiner: Yes, sir.

I might call attention to the fact that the gas purchase contract is one also entered into between Triangle and the Union Producing Company. I do not believe you referred to that, Mr. Hendren.

Mr. Hendren: No, sir.

Presiding Examiner: They are another party to this instrument, Exhibit 125.

Mr. Fletcher: What is the original exhibit, the first exhibit, No. 106 or 105?

The Witness: 103.

Mr. Hendren: Exhibit No. 103.

Now, I would like to have marked for identification as

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Exhibit No. 126 a letter dated March 31, 1950, with reference to Contract 2620, addressed to Union Producing Company at Shreveport, La., from United Gas Pipe Line Company, consisting of one page.

Presiding Examiner: Apparently there are some other contracts referred to on that page. It refers in the body of the letter to 2620, 2622, 2615, and 2614.

Mr. Fletcher: The same objection.

Presiding Examiner: It would be the same ruling.

I think the objection is premature.

Mr. Hendren: Will that be marked for identification as Exhibit 126?

Presiding Examiner: Yes, that will be marked for identification as Exhibit 126.

(Letter dated March 31, 1950, with reference to Contract 2620, addressed to Union Producing Co. from United Gas Pipe Line Co., was marked Mississippi River Fuel Exhibit No. 126, for identification.)

By Mr. Hendren:

Q. Now, Mr. Barnett, I hand you what has been marked for identification as Exhibit 126. Do you have out of Exhibit 103 the photostatic copy of the letter from which that photostat was made? A. Yes, sir.

Q. And does that also apply to purchases by United from



Union Producing Company in Sligo Field? A. Yes, sir.

Mr. Hendren: Now, I would like to have marked as Exhibit 127 a Contract No. 2139, a gas purchase contract, applicable to Sligo Field, containing four pages, and dated September 26, 1937.

Presiding Examiner: That may be marked Exhibit 127, for identification.

(Gas purchase contract, dated September 26, 1937, applicable to Sligo Field, was marked Mississippi River Fuel Exhibit No. 127, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will hand you what has been marked Exhibit 127, for identification, and ask you to refer to Exhibit 103 and tell me whether or not that is a photostatic copy of the photostatic copy of the contract contained in that exhibit? A. It is a photostatic copy of the Contract 2139.

Q. And that was dated September 26, 1937? A. Yes, sir.

Mr. Fletcher: May I ask a clarifying question?

Presiding Examiner: Yes.

Mr. Fletcher: Mr. Barnett, Contract 2139, which has been marked for identification Exhibit No. 127, is dated September 26, 1937. What general exhibit does that come from



that you brought here?

The Witness: 103.

Mr. Fletcher: Does Exhibit 103 show any amendment to Contract 2139?

The Witness: Yes, sir.

Mr. Fletcher: The same objection, if the court please.

Presiding Examiner: Yes, the same ruling.

Let me ask you, Mr. Hendren, do you expect to have marked for identification the contract which modifies Exhibit 127?

Mr. Hendren: I am not too certain we have it here, Judge. We do not have these in exact order, so that we could put them right together, and we would like to get them all identified and if we do not have it I think we will pretty soon.

Presiding Examiner: I assume Mr. Fletcher will press his objection at the time you want to offer those in evidence.

Mr. Fletcher: I surely will, and that is another illustration, Mr. Examiner, of this morass we are getting into here. Suppose he comes up with this amendment later as 142, then we have to scramble and scramble to get 142 and 127 together. We just have a terrible mess coming into the record.

Presiding Examiner: That may be. Unfortunately, Mississippi apparently has not had time to get these exhibits in better fashion.

Mr. Hendren: I would like to have marked for identifica-

tion as Exhibit 128 gas purchase Contract No. 2140 pertaining to the Sligo field, consisting of four pages, and dated September 26, 1937. May I have that so marked?

Presiding Examiner: Yes, that will be marked Exhibit 128, for identification.

(Gas Purchase Contract No. 2140, pertaining to Sligo Field, was marked Mississippi River Fuel Exhibit No. 128, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will hand you what has been marked Exhibit 128, for identification, and ask if you will look at Exhibit 103 and tell me whether or not this Exhibit 128, so marked, is a photostat of the photostatic copy of the contract from that exhibit? A. Yes, sir; it is.

Presiding Examiner: Was that out of Exhibit 103?

Mr. Hendren: 103, sir.

Mr. Fletcher: Mr. Examiner, may I ask the same question again?

Presiding Examiner: Yes, you may.

Mr. Fletcher: Mr. Barnett, does Exhibit 128 show that G.P.C. 2140 has been amended at all?

The Witness: Yes, sir.

Mr. Fletcher: The same objection, if the Examiner please.



Presiding Examiner: The same ruling.

By Mr. Hendren:

Q. And that applies, Mr. Barnett, to gas purchases in the Sligo field between Union Producing Company and United Gas Pipe Line Company? A. Yes, sir.

Mr. Da Pra: I assume that modifying contract is not here, either?

Mr. Hendren: I think it is.

Presiding Examiner: I asked before we got into a prior exhibit whether Mr. Hendren expected to produce a modifying contract, and I got an answer in the affirmative. I assumed the answer was the same here.

Mr. Hendren: Now, I would like to have marked as Exhibit 129, gas purchase Contract No. 2624 between Union Producing Company and United Gas Pipe Line Company, consisting of 20 pages, and dated April 10, 1950.

Presiding Examiner: Well, that will be marked Exhibit 129, for identification.

(Gas Purchase Contract No. 2624, between Union Producing Co. and United Gas Pipe Line Co., consisting of 20 pages, was marked Mississippi River Fuel Exhibit No. 129, for identification.)

By Mr. Hendren:

Q. Now, Mr. Barnett, I will hand you what has been



marked as Exhibit 129 for identification, and have you refer to Exhibit 103 and tell me whether that exhibit so marked is a photostatic copy of a contract, No. 2624, contained in Exhibit 103? A. It is.

Q. And to what field does that refer, Mr. Barnett? A. Sibley Field.

Mr. Fletcher: The same objection, Mr. Examiner.

Presiding Examiner: The same ruling.

The Witness: This is the contract.

Presiding Examiner: This is a little different from the prior two exhibits.

Mr. Fletcher: It shows in Article 18 on page 16 that it supersedes other gas purchase contracts.

Presiding Examiner: I see.

By Mr. Hendren:

Q. Now, is the contract which has been marked for identification as Exhibit 129 the contract under which United is presently purchasing gas from Union Producing Company? A. It is one under which we are presently purchasing gas; yes, sir.

Mr. Hendren: I would like to have marked for identification as Exhibit 130, an amendment to gas purchase contract 2529 between Union Producing Company and United Gas Pipe Line Company, consisting of four pages, and a gas purchase contract, No.



2529, between Union Producing Company and United Gas Pipe Line Company, also consisting of four pages, dated November 2, 1939, making eight pages in total.

Presiding Examiner: Very well, that will be marked Exhibit 130, for identification.

(Amendment to Gas Purchase Contract No. 2529 and Gas Purchase Contract No. 2529, consisting of eight pages, dated November 2, 1939, was marked Mississippi River Fuel Exhibit No. 130, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will hand you what has been marked for identification as Exhibit 130, and ask you to refer to Exhibit 103 and tell me whether this exhibit is a photostatic copy of the contract and amendment to the Contract 2529? A. They are, but it is another amendment that should be out.

Q. You mean there is an amendment since this, or a superseding amendment A. Yes.

Q. And does that apply to the purchase of gas in Sibley Field? A. Yes.

Q. And I believe by your answer, then, that the amend-

ment to the gas purchase contract dated August of 1948 is not the contract under which you are now purchasing from Union Pro-

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ducing Company? A. No, sir.

Mr. Fletcher: The same objection, Mr. Examiner.

Presiding Examiner: The same ruling.

Do you expect, Mr. Hendren, to produce the latest contract?

Mr. Hendren: Well, we thought we had it, Judge, but apparently we did not.

Presiding Examiner: Was the latest contract in the records that you produced, sir?

The Witness: Yes.

Mr. Hendren: I believe the latest contract in that series is marked for identification as Exhibit No. 129, applying to contract 2624.

Presiding Examiner: You mean 129 is the contract which modifies Exhibit 130?

Mr. Hendren: That is what I am informed by Mr. Barnett.

Presiding Examiner: Is that correct, Mr. Barnett?

The Witness: Yes, sir; but there are two more contracts that it also superseded——

Presiding Examiner: You mean Exhibit 129 supersedes two additional contracts?

The Witness: It supersedes three additional contracts, one of which was 2529.

Presiding Examiner: I see.

Mr. Fletcher: The same objection, Your Honor.

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Presiding Examiner: Yes, sir; the same ruling.

Mr. Hendren: Now, I would like to have marked for identification as gas purchase Contract numbered 2643, as No.

131, being a gas purchase contract between Union Producing Company and United Gas Pipe Line Company, consisting of 29 pages in all, with exhibits A and B attached to the contract, which contract is dated April 10, 1952.

Presiding Examiner: I think that is 28 pages.

Mr. Hendren: I will take your word for it.

Mr. Fletcher: The same objection, Mr. Examiner. It is illuminated by the material which appears as Exhibit B at the back of that, which gives considerable point to what I have been trying to explain into the record as to the situation which really exists here.

I just call that to your attention.

Presiding Examiner: Am I to understand from that, that this Exhibit 131, for identification, is a modification of the contracts which are listed in Exhibit B; is that correct?

Mr. Fletcher: Yes.

Presiding Examiner: Let me ask you, Mr. Hendren, there are a very large number of contracts listed in Exhibit B?

Mr. Hendren: That is correct.

Presiding Examiner: Now, I, of course, want to give Mississippi every opportunity possible to develop its case, but if we are just going to get fragments in here, I am going to

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get considerably disturbed about this situation.

Mr. Hendren: Let me ask the witness a few questions on this.

Presiding Examiner: All right.

By Mr. Hendren:

Q. Mr. Barnett, will you refer again to what has been marked for identification as Exhibit 131.

(Gas Purchase Contract No. 2643, with Exhibits A and B, consisting of 28 pages, dated April 10, 1952, was marked Mississippi River Fuel Exhibit No. 131, for identification.)

By Mr. Hendren:

Q. Attached to that exhibit is Exhibit B, which lists a series of contract numbers, giving the numbers, the lease number, and the date of the contract. Now, did this gas purchase Contract, designated 2643, supersede all of those contracts that are set out on Exhibit B? A. Yes, sir.

Q. And what fields did they apply to? A. It is in the Rodessa Field.

Q. Now, did that supersede all of the contracts between Union Producing and United in the Rodessa Field? A. It superseded them effective on January 1, 1952.

Q. And does Exhibit B contain a list of all of the contracts between United and Union relative to gas purchase contracts in Rodessa Field?



A. Yes, sir.

Mr. Hendren: I would like to have marked for identification as Exhibit 132 ——

Presiding Examiner: Wait a minute, we had marked 131, this contract we were discussing with Exhibit B attached. Has that been marked for identification as Exhibit 131?

Mr. Hendren: Yes.

Presiding Examiner: My feeling right now is that I have great doubt that I will permit this to go into evidence in this form.

Mr. Hendren: Maybe we will have to photostat all of these.

Presiding Examiner: Well, we will cross that bridge when we get to it.

By Mr. Hendren:

Q. Is the gas purchase contract identified as No. 131 the gas purchase contract under which you are now purchasing gas in the Rodessa Field? A. Yes, sir.

Mr. Hendren: Now, I would like to have marked for

identification Exhibit 132, being an amendment of gas purchase contract 2445, in the Rodessa field, the amendment consisting of four pages, and attached thereto as gas purchase contract, No. 2445, consisting of 12 pages, making 16 pages in its entirely, the amendment to the gas purchase contract being dated October 26, 1938, and the gas purchase contract being dated December 9,

**1188**

1937.

Could that be identified, please?

Presiding Examiner: Yes, that will be identified as Exhibit 132.

(Amendment to Gas Purchase Contract No. 2445 in the Rodessa Field, dated October 26, 1938, and Gas Purchase Contract No. 2445, dated December 9, 1937, consisting of 16 pages, was marked Mississippi River Fuel Exhibit No. 132, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will hand you what has been identified as Exhibit 132, for identification, and ask you to refer to Exhibit 102 and tell me whether or not Exhibit 132 is a photostatic copy of an amendment to contract No. 2445 contained in Exhibit 102? A. Yes, sir.

Q. To what field does that apply? A. That is in the Rodessa Field.

Q. Now, is that contract superseded by the contract identified as Exhibit 131, the previous exhibit? A. Yes, sir.

Q. Now, attached to Exhibit 131 is an exhibit showing a number of contracts in the Rodessa Field. I believe you testified to that, Mr. Barnett? A. Yes, sir.

**1189**

Q. Now, do you know whether or not contract 2445 is similar to the contracts that are listed on Exhibit B

attached to Exhibit 131, or were those contracts different?

Mr. Fletcher: I object to that, Mr. Examiner. The contract is the best evidence.

Presiding Examiner: Yes, I think that is a proper objection. The objection will be sustained. It calls for a conclusion by this witness.

Mr. Hendren: I thought he was the gas purchase man, and he might know, and it would save putting all of those contracts in evidence.

We have checked them, Mr. Fletcher, and we think they are the same.

Mr. Fletcher: I will not agree to it, Mr. Hendren.

Mr. Hendren: All right.

Presiding Examiner: The objection will be sustained.

Mr. Hendren: I believe we have marked for identification Exhibit 132?

Presiding Examiner: Yes, we have marked for identification Exhibit 132.

Mr. Hendren: Now, I would like to have marked for identification as No. 133, gas purchase Contract 2591, between Union Producing Company and United Gas Pipe Line Company, which consists of four pages, and is dated February 1, 1946.

Presiding Examiner: All right, that will be marked for



identification as Exhibit 133.

(Gas Purchase Contract No. 2591, consisting of four pages, dated February 1, 1946, was marked Mississippi River Fuel Exhibit No. 133, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will hand you what has been marked for identification as Exhibit 133, and ask you to refer to Exhibit 102 and tell me whether or not Exhibit 133 is

a photostatic copy of the photostatic copy of Contract 2591 contained in that exhibit? A. It is.

Q. Now, Mr. Barnett, referring back to Exhibit 131, that you identified a moment ago, is this document identified as Exhibit 133, being a copy of Contract 2591 in the Rodessa Field, one of the contracts listed on Exhibit B of Exhibit 131?

Presiding Examiner: I think you will find it on page 2 of Exhibit B, the seventh line from the bottom.

The Witness: Yes, sir.

By Mr. Hendren:

Q. Then Contract 2591, as identified as Exhibit 133, was superseded by your gas purchase Contract 2643, identified as Exhibit 131; is that correct? A. Yes, sir.

Mr. Hendren: I would like, then, to show in the record that the last Contract, 2591, is identified as 133.



Presiding Examiner: It has been marked Exhibit 133, for identification.

Mr. Hendren: I would now like to have marked for identification gas purchase Contract 2583, as Exhibit 134, being a contract between Union Producing Company and United Gas Pipe Line Company, consisting of five pages, and dated the 8th day of November, 1945.

Presiding Examiner: Very well, that will be marked Exhibit 134, for identification.

(Gas Purchase Contract No. 2583, consisting of five pages, dated November 8, 1945, was marked Mississippi River Fuel Exhibit No. 134, for identification.)

Mr. Fletcher: What exhibit is Exhibit 133, for identification?

Mr. Hendren: 102.

Presiding Examiner: Do you want your short afternoon recess now?

Mr. Hendren: It would help.

Presiding Examiner: We will take a ten-minute recess now.

(Whereupon, at 3:45 p. m., a recess was taken until 3:55 p. m. of the same day.)

Presiding Examiner: The hearing will please come to order.

Mr. Hendren: I believe, Your Honor, the last contract we identified was Exhibit 134, for identification.



Presiding Examiner: Yes, that was marked for identification.

Mr. Hendren: And I believe I described that exhibit. It refers to Contract 2583, between Union Producing and United Gas Pipe Line Company, consisting of five pages, made the 8th day of November, 1945.

By Mr. Hendren:

Q. Mr. Barnett, I hand you what has been identified as Exhibit 134 and ask you if that is the photostatic copy of the purchase contract that is contained in Exhibit 102?

Presiding Examiner: I think the witness testified before.

Mr. Hendren: He could not find that one.

The Witness: Yes, sir; we found it.

By Mr. Hendren:

Q. Now, Mr. Barnett, that applies to gas purchased from the Rodessa Field; is that correct? A. Yes, sir.

Q. Would you examine Exhibit B to Exhibit 131 and tell me whether that contract has superseded the one which has been identified as Exhibit 131, that is No. 2583? A. Yes, sir.

Mr. Da Pra: Is that shown on the first page of Exhibit B to Exhibit 131?

The Witness: Yes, sir; it is.

Mr. Hendren: Now, I would like to have identified as

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Exhibit 135, gas purchase Contract No. 2633 between Union Producing Company and United Gas Pipe Line Company, consisting of 20 pages, the contract being signed and dated May 25, 1951.

Presiding Examiner: I think there is an 11-A, so there is more than 20 pages. That would make it 21 pages.

Mr. Hendren: That is correct.

Presiding Examiner: That will be marked Exhibit 135, for identification.

(Gas Purchase Contract No. 2633, consisting of 21 pages, dated May 25, 1951, was marked Mississippi River Fuel Exhibit No. 135, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will hand you what has been marked Exhibit 135, for identification, and ask you to refer to document which has been marked for identification as Ex-Exhibit 102 and tell me whether or not Exhibit 135 is a photostatic copy of your gas purchase Contract No. 2633? A. Yes, sir; it is.

Q. And what field does that apply to? A. That is Lake Bistineau.

Q. Now, is United presently purchasing gas from the Union Producing Company under that contract? A. Yes, sir; but it is not the contract they were purchasing under in 1950.

Q. In 1950? A. Yes.

1194

Q. This supersedes preceding contracts; is that right, Mr. Barnett? A. Yes, sir.

Mr. Fletcher: The same objection, Mr. Examiner. That is reflected in paragraph 20 on page 16.

Presiding Examiner: The same ruling.

Mr. Hendren: Now, I would like to have marked for identification as Exhibit 136 Contract No. 2565, between the Union Producing Company and United Gas Pipe Line Cor pany, consisting of four pages, contract being dated March 2, 1944.

Presiding Examiner: That will be marked Exhibit 136, for identification.

(Gas Purchase Contract No. 2565, dated March 2, 1944, consisting of four pages, was marked Mississippi River Fuel Exhibit No. 136, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will hand you what has been marked for identification as Exhibit 136, and ask you to check Exhibit 102 and tell me whether or not this exhibit is a photostatic copy of the gas purchase contract No. 2565? A. Yes, sir.

Q. And what field does that apply to, Mr. Barnett? A. that is in——

Q. Lake Bistineau? A. Yes, sir.



Mr. Fletcher: Mr. Barnett, is the paper which has been marked for identification as Exhibit 136 complete, or are there any other subsequent amendments?

The Witness: There are subsequent amendments to it.

Mr. Fletcher: The same objection, Mr. Examiner.

Presiding Examiner: The same ruling.

By Mr. Hendren:

Q. I will ask you, Mr. Barnett, to refer to the paper which has been marked Exhibit 135, for identification, as gas purchase contract covering the Lake Bistineau Field, and ask you whether or not that contract superseded the hibit 136? A. Yes, sir; it superseded, but it seems like there is an amendment missing in the step.

(1195)

Q. I believe you told me that Contract 135 is a contract under which you are now purchasing gas from Lake Bistineau Field? A. That is right.

Q. So it is the last amendment that is in effect relative to that Contract 2565; is that right? A. Yes, sir.

Mr. Fletcher: I do not believe that meets the objection, Mr. Examiner, because there are other amendments, and it is not a complete picture.

Presiding Examiner: Yes, the witness testified, I believe,

1196

that subsequent to the discussion of Exhibit 136, and before the discussion of Exhibit 135, for identification, there was another contract.

By Mr. Hendren:

Q. Mr. Barnett, I believe you testified that Exhibit 135 is a gas purchase contract, is it not, covering Lake Bistineau Field? A. Yes, sir.

Q. And it is a new contract, is it not? A. Which had superseded old contracts that were in effect in 1950.

Q. Yes, sir; but it is not an amendment to a contract, it is a new contract, is it not? A. Well, it is an amendment in effect in that it superseded old contracts.

Mr. Hendren: Now, I would like to have marked for identification as Exhibit 137, gas purchase Contract No. 2548, covering gas purchases in the Lake Bistineau Field between Union Producing Company and United Gas Pipe Line Company. This document consists of four pages, and is dated August 29, 1941.

Presiding Examiner: That is the date of the execution, August 28, 1941?

All right, that will be marked Exhibit No. 137, for identification.

(Gas Purchase Contract No. 2548 in Lake Bistineau Field,

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dated August 29, 1941, consisting of four pages, was marked Mississippi River Fuel Exhibit No. 137, for identification.)

Mr. Fletcher: May I ask the same question, Mr. Examiner?

Presiding Examiner: Yes, sir.

Mr. Fletcher: Are there any subsequent amendments to the paper which has been marked for identification as Exhibit No. 137?

The Witness: Yes, sir.

Mr. Fletcher: The same objection, Mr. Examiner.

Presiding Examiner: The same ruling. This is in the Lake Bistineau Field?

Mr. Hendren: That is correct.

By Mr. Hendren:

Q. Mr. Barnett, I will hand you what has been marked for identification as Exhibit 137 and ask you to refer to Exhibit 102 and tell me whether or not that is a photostatic copy of Contract No. 2548? A. Yes, sir.

Q. Now, Mr. Barnett, referring back to Exhibit 135 covering gas purchase contracts in the Lake Bistineau Field, can you tell us whether or not the gas purchase contract identified for identification purposes as 135 supersedes the gas purchase contract identified as 137? A. It supersedes it, but there has got to be an amendment in between.

1198

Q. Well, then, your answer to that would be "yes," it is the last contract? A. It is the last contract, and 2548 was the first one.

Q. And Contract 2548 is no longer in effect as to gas purchased out of Lake Bistineau Field; is that correct? A. But it was in effect in 1950.

Q. It was in effect in 1950.

Mr. Fletcher: Mr. Examiner, I object to counsel's statement of the witness' answer. The answer is "yes," so and so. Well, the answer was not "yes," so and so, the answer was that Exhibit 135 did ultimately supersede Exhibit 137 but that there were intervening amendments, so it does not directly supersede, and the answer counsel put in the record is not reflective of the witness' answer.

I object to that.

Presiding Examiner: Of course what counsel says is not evidence.

Mr. Fletcher: Well, I do not want it accepted as a statement of the witness' answer.

Presiding Examiner: Now, Exhibit 137, for identification, is the last of the series of exhibits you have given to me.

Mr. Hendren: That is correct. I have another series.

I would like to have marked for identification as Exhibit 138, Contract No. 1060, being amendment to gas purchase contract between Union Producing Company and the United Gas Pipe



Line Company, consisting of 17 pages in the amendment to the gas purchase contract, which is dated March 27, 1951, and another amendment to gas purchase Contract 1060 consisting of nine pages, which amendment was dated December 31, 1948.

Presiding Examiner: Ten pages, isn't it? Making a total of 27 pages for Exhibit 138.

That will be marked Exhibit No. 138, for identification.

(Amendment to Gas Purchase Contract No. 1060, consisting of 17 pages, dated March 27, 1951, and amendment to Gas Purchase Contract 1060, consisting of 10 pages, dated December 31, 1948, was marked Mississippi River Fuel Exhibit No. 138, for identification.)

Mr. Fletcher: The same objection, Mr. Examiner; these are only two exhibits.

Presiding Examiner: I understand. These are still being marked for identification.

By Mr. Hendren:

Q. I hand you what has been marked for identification as Exhibit 138, Mr. Barnett. Will you turn to Exhibit 109 and tell me whether that is an amendment to gas purchase Contract 1060? A. They are photostatic copies of two amendments to Contract 1060.

Q. What field does that refer to? A. San Domingo-Strauch-Wilcox.

1200

Q. I will ask you to examine the amendment to the gas purchase contract, which was dated March 27, 1951; that is the first amendment in the series, and tell me whether or not that is a contract under which United Gas Pipe Line Company is now purchasing gas from the Union Producing Company in that field?

Mr. Fletcher: Mr. Examiner, that calls for a conclusion of law, because here are two amendments. The original contract is not here, and what is the contract out of all of these pieces of paper is a question of law. I do not think this witness should answer that.

Presiding Examiner: Yes, the objection is overruled.

By Mr. Hendren:

Q. Will you tell me, Mr. Barnett, whether the price set out in 1060 is the price now being paid by United Gas Pipe Line Company to Union Producing Company under the amendment which is identified as Exhibit 138, and is dated March 27, 1951?

Presiding Examiner: Where is the price stated in this?

The Witness: Page 12.

(1200)

Presiding Examiner: Will you read the question?

(The question was read.)

Mr. Da Pra: There seems to be a lot of prices mentioned on page 12, Mr. Examiner.

Presiding Examiner: Well, actually the price mentioned on page 12 seems to be a formula price, and I think he can state

1201

whether the price being paid by United is in accordance with the formula set forth.

Mr. Hendren: It does not take a formula to figure out the price. It says 7½ cents during the next succeeding five years.

Presiding Examiner: I do not know when the next succeeding five-year period starts.

Mr. Da Pra: That was my difficulty, Mr. Examiner.

Mr. Fletcher: The contracts speaks for itself.

Mr. Hendren: Very well, I will withdraw the question.

Presiding Examiner: All right.

Mr. Hendren: Mr. Examiner, I would like to have marked for identification as Exhibit 139 a letter dated November 3, 1953, from United Gas Pipe Line Company to all parties sellers under North Pettus and Burnell Gas Purchase Contract, which consists of three pages.

Presiding Examiner: That may be marked Exhibit 139, for identification.)

(Letter dated November 3, 1953, from United Gas Pipe Line Co. to all parties sellers under North Pettus and Burnell Gas Purchase Contract, was marked Mississippi River Fuel Exhibit No. 139, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will hand you what has been marked for identification as Exhibit 139, and ask you to check Exhibit

1202

109 and tell me whether that is a photostatic copy of a letter in Exhibit 109 under date of November 3, 1953, as described? A. That is a photostatic copy of a letter, but we have a pretty big contract in North Pettus and Burnell that this letter refers to.

Q. Is there any letter there of a later date or any contract there of a later date than November 3, 1953? Would you check? A. There seems to be a tax letter dated December 4, 1954.

Q. Is there any other letter relative to the pricing of gas subsequent to that date?

Presiding Examiner: Subsequent to what date?

Mr. Hendren: Subsequent to November 3, 1953.

Presiding Examiner: Well, the tax letter I assume would increase the price of gas?

Mr. Fletcher: Yes, sir.

The Witness: Yes, sir.

Presiding Examiner: Now, is there any letter other than the tax letter? Is that what you are getting at?

Mr. Hendren: Yes.

The Witness: I do not believe so.

Mr. Fletcher: Mr. Examiner, I want the same objection, and I do not want to impose on the Examiner's time, but the second and third paragraph of page 1 of the letter which has been marked Exhibit 139, for identification, on its face shows

1203

the wisdom of the necessity of having the balance of it here.

Presiding Examiner: It may very well be that these may not be received in evidence unless some connection is made, but I am beginning to get a little worried about all of the loose ends which may be created here by this method of going forward. I do not know whether when the time comes for ruling on this I am going to be able to keep in

mind each one of these, and how each one came in, and what it provides. It is quite a physical problem to do that.

Mr. Hendren: I think as the Examiner reads these exhibits you will find they all refer to increase in gas prices. That is one of the things we are contending, that these prices were increased without regard to the provisions of the contracts, and these are illustrative of that point.

Presiding Examiner: Well, I gather from the statements made in the application that you are going much further than what you have just stated. You were saying in the application that you were going to establish through the evidence to be obtained as a result of this subpoena that the prices which United was paying to Union were unreasonable and unjust.

Do I take it, Mr. Hendren, that you have come to the conclusion that the prices are unreasonable and unjust simply because the prices are higher than they were before?

Mr. Hendren: One of the positions we are taking is that these prices were increased without regard to the contract pro-

1204

visions, and we have tried to illustrate through a series of contracts here that the original contracts extended up for many long years.

Presiding Examiner: Let me ask you about your theory on this, if I may: Assume—I do not know that these are the facts, I do not know what all of the facts are, or what the facts are that you may develop, because all of the evidence is not in—assume, arguendo, that United has a contract with Union in Field A. Assume further that other persons have contracts with United in Field A, persons other than Union. Assume, as I gather you have already conceded, that the contracts between United and these other persons were at a certain price, and that price was a price which United was entitled to have considered as a part of its cost of service.

Do I take your theory to be that if United and Union agreed to a price equivalent to that of independent producers in the same field—despite a contract between Union and United for a specified term of years—they would agree to pay the price to Union equivalent to the price to such independent producers, in the face of such contract—that that automatically establishes that United is not entitled to have credited in its cost of service the price of gas paid to Union under such circumstances?

Mr. Hendren: I think definitely not because that is certainly against any provisions I have known in decisions prior



to this time, and you will find when this rate case was filed a lot of these amendments have been made after the rate case was filed, and during the time the rate case was being heard.

Presiding Examiner: In other words, your theory is that——

Mr. Hendren: A contract is a contract.

Presiding Examiner: United and Union could not agree to any changes in that contract which would raise the price of gas up to the price which was the competitive price in that field; is that correct?

Mr. Hendren: That is correct, I do not believe they can.

Now, I would like to have marked for identification as Exhibit 140, gas purchase Contract No. 2054, between Union Producing Company and United Gas Pipe Line Company, consisting of four pages, dated December 26, 1937.

Presiding Examiner: That will be marked Exhibit 140, for identification.

(Gas Purchase Contract No. 2054, dated December 26, 1937, consisting of four pages, was marked Mississippi River Fuel Exhibit No. 140, for identification.)

(1205)

Presiding Examiner: There is one other thing on my mind in connection with your theory: On United's contracts with Union, what is your theory as to what the price should be, how should that price be fixed? You say that it should not be fixed on the competitive level within that area, as I understand your position. Is that right?

1206

Mr. Hendren: Take, for example, the document which has been marked for identification as Exhibit 140 covering gas in the South Martinez Field. The contract price, as stated in that contract, under paragraph 10, is 3 cents. The life of that contract under paragraph 15, it extends until December 31, 1962. Now, there is no provision in that contract for any manner for an escalation clause or for changing the contract price of certain conditions exist. We take the position that that contract was a binding obligation between companies, and as they were affiliates not doing business at arms length bargaining, that these increases were not supported by adequate considerations and were made regardless of the terms of the original contracts.

Presiding Examiner: Let me ask you this: Suppose United had a contract with a non-affiliated person in a field at a definite price. Suppose it had a number of such contracts with different people, and there are no favored-nations clauses in the contract. Suppose that United and a new person in that field with whom United had not done business before entered into a contract at a certain price, and that price was higher than had been paid theretofore, suppose that United and the persons with whom it had contracts met between themselves and voluntarily agreed to raise the price in that field, would you then take the position that United had no authority to pay the prices which it agreed to in a modified contract?

1207

Mr. Hendren: That may be a question for this Commission to decide.

Presiding Examiner: I am asking your opinion to test out what your theory is.

Mr. Hendren: I do not believe we have enough facts yet.

Presiding Examiner: I am giving you an assumed state of facts.

Mr. Hendren: We are not contesting the prices paid non-affiliated producers.

Presiding Examiner: I understand that, but I am asking you under this assumed state of facts to test out your theory. You do not have to answer if you do not want to.

Mr. Hendren: I would rather not answer.

I will tell you Mississippi's position: We are not objecting to the prices paid non-affiliated producers in this case.

Presiding Examiner: What is your theory as to how United and Union should arrive at a price for the cost of services between United and Union?

Mr. Hendren: I think they should file the contracts, in the first place, with the Commission so the Commission could adequately determine what the price should be.

Presiding Examiner: I am not talking about 174. I am just talking about how gas prices should be figured.

Mr. Hendren: The contract price that was established on these long-term contracts should be used in this case. The

1208

amendment since those contracts, without adequate consideration, should not be allowed by the Commission as cost of service.

Presiding Examiner: Let me ask you this question:

Suppose there were no Union Producing Company and United itself engaged in the production of gas. What is your theory as to how that gas should be priced?

Mr. Hendren: That is a different situation under the Panhandle case.

Presiding Examiner: I know it is a different case from what we have here. I am asking your theory under that situation.

Mr. Hendren: Under the last decision, it was the fair field price, and I agreed with that.

Presiding Examiner: Now, if you agree with the fair field price——

Mr. Hendren: Under those facts. I hate to be cross-examined on this theory.

Presiding Examiner: Well, I want to follow you on what your evidence is. I think I am entitled to know how this case is going, and I think you want to let me know.

Mr. Hendren: I would like to let you know.

Presiding Examiner: Now, I want to follow your theory as closely as I can, because I want to understand exactly what you are doing, exactly what your theory is, so that if and when the time comes for some consideration of these exhibits, and of the case as a whole, I want to know precisely what your theory



is, and I think the earlier I know the better off we are.

As I understand it, you consider that the fair field price of gas, as exemplified in the Panhandle case, is a justifiable theory, and one we should follow, is that correct?

Mr. Hendren: For company-produced gas.

Presiding Examiner: Can you tell me now what is the difference between a situation where a company produces gas and an affiliate of that company produces gas in regard to the fair field price of gas theory?

Mr. Hendren: When you have contact relationships those contract relationships control.

Presiding Examiner: What other difference is there?

Mr. Hendren: What other difference is there?

Presiding Examiner: Yes.

Mr. Hendren: Well, they are two separate and distinct corporations, one of them is buying gas from the other one, but they are affiliated, and the prices paid is quoted out in an agreement between the two.

Presiding Examiner: All right, sir.

Mr. Hendren: I believe the last one we marked for identification, Mr. Examiner, was Exhibit 140.

Mr. Fletcher: If the Examiner would permit, I would like to ask whether or not Exhibit 140, for identification, the same question I have been asking:

Mr. Barnett, Exhibit 140, for identification, shows to be dated September 26, 1937. Are there any amendments to contract



2054 since that date?

The Witness: Excuse me while I find my book.

Mr. Fletcher, I do not think that one has been changed. This was the contract under which we were operating in 1950.

Mr. Da Pra: Do you know whther you are purchasing gas under this contract now?

The Witness: No, sir; we took out the gathering system back in 1951, and abandoned the field.

Presiding Examiner: Before we get to the next exhibit, it is 4:30 now.

Mr. Hendren: Did we complete the identification of that exhibit?

Presiding Examiner: I do not know. I would just say that I am perfectly willing to keep on, but if you prefer

to recess after we complete this identification we can do so.

Mr. Hendren: There is a pretty big batch. This is as good a stopping place as any.

Presiding Examiner: I do not think we are going to get all of them in before the day is over.

Now, have you described 140?

Mr. Hendren: Yes, that is a gas purchase contract consisting of four pages, dated November 30, 1937, between United Gas Pipe Line Company and Union Producing Company.

Presiding Examiner: All right, that will be marked Exhibit 140, for identification.

**1211**

By Mr. Hendren:

Q. I will ask you, Mr. Barnett, by referring to Exhibit 108, if that is a photostatic copy of the contract 2054 as contained in that exhibit? A. Yes, sir.

. . . . . .

**1218**

**Excerpts From Transcript of Hearing Held January 19, 1955**

PROCEEDINGS

Presiding Examiner: The hearing in the matter of United Gas Pipe Line Company, Docket No. G 2019, et al., will come to order.

Mr. Da Pra: May I ask a question at this juncture?

Presiding Examiner: Yes.

Whereupon

**Charles C. Barnett**

resumed the witness stand, and was examined and testified as follows:

Mr. Da Pra: Mr. Barnett, I want the record to be very clear on Exhibit No. 140, which was marked for identifi-

cation near the end of the session yesterday, which refers to the South Martinez field.

Now, you have testified, as I recall it, that this is one field that you were not taking any gas, and they had, in fact, taken up the gathering system; is that correct?

The Witness: That is correct.

Mr. Da Pra: So you are no longer taking any gas under contract 2054, which has been marked for identification as Exhibit 140?

Mr. Hendren: 2854.

Mr. Da Pra: 2054.

Presiding Examiner: There is a misprint on this document. It is 2054.



The Witness: No.

Presiding Examiner: Do you have any further questions?

Mr. Da Pra: No.

Presiding Examiner: You may continue, Mr. Hendren.

Direct Examination (Continued)

By Mr. Hendren:

Q. Mr. Barnett, you stated in answer to Mr. Da Pra's question that you are not taking any more gas out of the South Martinez field. Do you mean that you are not taking any gas out of the South Martinez field now? A. That is correct.

Mr. Hendren: I would like to have marked for identification as Exhibit 141 a letter dated October 31, 1949, relative to contract 1546 found in Exhibit 108, consisting of eight pages, the first three pages being the letter dated October 31, 1949, and the last five pages being a contract in the Agua Dulce Field, No. 2001, dated the 26th of September, 1937.

Presiding Examiner: That may be marked Exhibit 141, for identification.

(1219)

(Letter dated October 31, 1949, relative to Contract 1546, and Contract No. 2001 in Agua Dulce Field, dated September 26, 1937, was marked Mississippi River Fuel Exhibit No. 141, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I hand you what has been marked Exhibit

1220

141, for identification, and have you refer to Exhibit 108 and tell me whether or not this photostat is a copy of the letter and contract mentioned? A. It is a photostat of the instrument you mentioned, but it is not the complete contract in Agua Dulce.

Q. Now, are there some other supplements to the contract in that particular field, Mr. Barnett? A. Yes, sir.

Mr. Fletcher: The same objection, Mr. Examiner.

Presiding Examiner: Same ruling.

By Mr. Hendren:

Q. And would you point out from Exhibit 108 what other amendments have been made to Contract 2001, or could you do that, Mr. Barnett? A. There appear to be other supplements to that letter you introduced.

Q. And were subsequent to October 31, 1949, dated after that date? A. Yes, sir.

Q. Are there any prior to that date? A. Well, there is a whole group of them prior to that date.

Q. As referred to Contract 2001? A. No, sir; not to 2001, by itself.

Mr. Da Pra: Have you finished with this contract, Mr.

1221

Hendren?

Mr. Hendren: Yes, sir; for identification.

Mr. Da Pra: May I ask a question for clarification?

Mr. Hendren: Yes, sir.

Mr. Da Pra: I notice that Exhibit 141, for identification, bears on its front page the number 2546, at least my copy does. What is the significance of that, Mr. Barnett? A. I believe that is simply a contract identification number that has been set up for this particular letter agreement.

Mr. Da Pra: But it also refers to 2001?

The Witness: In part to 2001.

Mr. Da Pra: Thank you.

Mr. Hendren: Now, I would like to have marked for identification as Exhibit 142 out of Exhibit 110 an amendment to a gas purchase contract, Contract No. 2569, consisting of 12 pages in total, and also including gas purchase Contract No. 2569, which was dated April 27, 1944, the amendment to the contract being dated November 26, 1949.

Presiding Examiner: That will be marked as Exhibit 142, for identification.

(Amendment to Gas Purchase Contract No. 2569, dated November 26, 1949, and Gas Purchase Contract No. 2569, dated April 27, 1944, were marked Mississippi River Fuel Exhibit No. 142, for identification.)

**1222**

By Mr. Hendren:

Q. Mr. Barnett, I will ask you to refer to Exhibit 110, and ask you whether the document which has been marked for identification as Exhibit 142 is a copy of the instruments referred to in Exhibit 110? A. Yes, sir; but that does not appear to be all of contract 2569.

Q. And you further refer to a letter with relation to that contract dated December 1, 1954, relative to Texas production tax? A. And maybe other instruments in there.

Mr. Fletcher: The same objection, Mr. Examiner.

Presiding Examiner: The same ruling.

Mr. Hendren: Now, I would like to have marked for

identification as Exhibit 143 an amendment to gas purchase contract 907, consisting of 54 pages, the amendment to the gas purchase contract being dated the first day of January, 1953; another agreement dated the 14th of May, 1948, and a contract entitled the Kirby Petroleum Company, the Union Producing Company, and other sellers, and the United Gas Pipe Line Company, buyer; that contract being dated August 1, 1949.

Presiding Examiner: It will be marked Exhibit 143, for identification.

(Amendment to Gas Purchase Contract No. 907, dated January 1, 1953; agreement dated May 14, 1948, and contract between



Kirby Petroleum Co., Union Producing Co., and other sellers, and United Gas Pipe Line Co., dated August 1, 1949, were marked Mississippi River Fuel Exhibit No. 143, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will hand you the document marked for identification as Exhibit 143, and have you refer to Exhibit 110 and tell me whether or not that is a photostatic copy of the documents taken from Exhibit 110 with relation to the Contract 907? A. That is the photostatic copy of the instruments which you listed which are part of Contract 907.

Q. And there are other documents in Exhibit 110 with reference to that contract; is that correct, Mr. Barnett? A. Yes, sir.

Mr. Fletcher: The same objection, Mr. Examiner.

Presiding Examiner: Very well, the same ruling.

I take it, in general, Mr. Fletcher, your objection will run to this whole line?

Mr. Fletcher: Yes.

Presiding Examiner: So I think it may be advisable to have the record show that you object to this whole line, and it will be the same ruling, assuming that the reason will be the same, and your exception, of course, will be noted.

Mr. Da Pra: Mr. Fletcher, does your objection run to a situation where the exhibit tendered by Mississippi includes



the entire contract as it is shown in the compilation data given to Mississippi?

Mr. Fletcher: Yes, it runs to two situations, Mr. Da Pra: It runs, first, to the situation where in a particular contract only part of that particular contract is offered. It runs, secondly, to the fact that even though a complete particular contract be offered that it is a portion only of that produced by the subpoena, and since the subpoena was directed to the contractural relationship in its entirety, the objection also runs to the fact that a complete contract is in itself only a portion of that subpoena.

Presiding Examiner: Well, in that connection, what is on my mind is this: I do not think a party is required to offer in evidence everything the party may subpoena, but I had in mind that if your objection to even the offering in a single instance of an entire contract ran, as I understood it, to the further ground that this would not be as a contract exemplitive, necessarily, of the contractual relationships as a whole between Union and United?

Mr. Fletcher: That is correct.

Presiding Examiner: Which is somewhat, I think, related, but a little different point.

Mr. Fletcher: You are correct, Mr. Examiner. What I was trying to address myself to was that portion of the objection which I felt Mr. Da Pra inquired about.

Presiding Examiner: Yes.

Mr. DaPra: I thank you for your position.

Mr. Hendren: Now, I would like to have marked for identification as Exhibit 144 a document with relation to contract 1298 between Union Producing Company and United Gas Pipe Line Company, consisting of 28 pages, the amendment to the contract being dated February 24, 1953, and the gas purchase contract 1298, being dated October 24, 1949.

Presiding Examiner: That will be marked Exhibit 144, for identification.

(Amendment to gas purchase contract No. 1298, dated February 24, 1949, and gas purchase contract No. 1298, dated October 24, 1949, was marked Mississippi River Fuel Exhibit No. 144, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, will you please refer to Exhibit 110 and tell me whether or not the document so identified is a photostatic copy of the amendment and the contract with relation to the gas purchase contract 1298? A. Yes, sir; it is a photostat of part of the contract 1298.

Q. And there are other documents in Exhibit 110 that are a part of that contract; is that what you mean, Mr. Barnett? A. Yes, sir.

Mr. Hendren: I would next like to have marked for



identification as Exhibit 145 an amendment to gas purchase Contract No. 2609, and a contract consisting of 27 pages in total; the amendment to the gas purchase contract being dated February 24, 1953, and another amendment to that gas purchase contract being dated February 23, 1950, and the gas purchase contract being dated October 4, 1948,

between Union Producing Company and United Gas Pipe Line Company.

Presiding Examiner: That will be marked Exhibit 145, for identification.

(Amendments to gas purchase contract No. 2609 dated February 24, 1953, and February 23, 1950, and gas purchase contract No. 2609 dated October 4, 1948, were marked Mississippi River Fuel Exhibit No. 145, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, will you refer, please, to Exhibit 110 with relation to contract 2609, and tell me whether the document marked for identification as Exhibit 145 is a photostatic copy of that contract and the two amendments mentioned? A. Yes, sir; but that does not appear to be all of our contract 2609.

Q. There are other documents in Exhibit 110 with reference to that contract, Mr. Barnett? A. Yes, sir.

Mr. Hendren: Next, I would like to have marked for identification as Exhibit 146, documents relative to contract 2604,



consisting of 13 pages, being an amendment to gas purchase contract 2604, that is dated March 31, 1953, and gas purchase contract 2604, which is dated the 16th of September, 1947.

Presiding Examiner: That will be marked Exhibit 146, for identification.

(Amendment to gas purchase contract no. 2604, dated March 31, 1953, and gas purchase contract No. 2604, dated September 16, 1947, were marked Mississippi River Fuel Exhibit No. 146, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will hand you the document which has been marked Exhibit No. 146, for identification, and ask

you whether or not that is a photostatic copy of the contract 2604 and the amendment mentioned? A. Yes, sir; but there are other instruments in contract 2604.

Q. With relation to that contract in Exhibit 110, is that correct, Mr. Barnett? A. Yes, sir.

Mr. Hendren: Next, I would like to have marked for identification Exhibit 147, gas purchase contract 2608, and amendments thereto, consisting of 23 pages; an amendment to the gas purchase contract being dated March 31, 1953, and the gas purchase contract being dated June 24, 1948.

Presiding Examiner: That will be marked Exhibit 147, for



identification.

(Amendment to gas purchase contract No. 2608, dated March 31, 1953, and gas purchase contract No. 2608, dated June 24, 1948, were marked Mississippi River Fuel Exhibit No. 147, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will ask you to refer to Exhibit 110 and tell me whether or not the document marked for identification as Exhibit 147 is a photostatic copy of the contract 2608, and the amendment to the gas purchase contract mentioned? A. Yes, sir; but there are other instruments in contract 2608.

Q. In Exhibit 110, is that correct, Mr. Barnett? A. Yes, sir.

Mr. Hendren: I would like to have next marked for identification Exhibit 148, with relation to gas purchase contract 2586, consisting of 13 pages, the amendment to the gas purchase contract dated April 1, 1953, and the gas purchase contract 2586 being dated November 8, 1945.

Presiding Examiner: That will be marked Exhibit 148, for identification.

(Amendment to gas purchase contract No. 2586, dated April 1, 1953, and gas purchase contract No. 2586, dated November 8, 1945, were marked Mississippi River Fuel Exhibit No. 148, for identification.)

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By Mr. Hendren:

Q. Mr. Barnett, will you please refer to Exhibit 110 with relation to contract 2586, and tell me whether or not the documents identified as Exhibit 148 are photostatic copies of the contract and the amendment mentioned? A. Yes, sir; but there are other instruments in contract 2586.

Q. There are other instruments in Exhibit 110; is that correct, Mr. Barnett? A. Yes, sir.

Mr. Hendren: I would like to have marked for identification as Exhibit 149 a gas purchase contract and amendment to gas purchase contract, with relation to contract 2619, consisting of 27 pages; the amendment to the gas purchase contract being dated April 1, 1953, and the gas purchase contract 2619 being dated April 4, 1950.

Mr. Fletcher: May I ask a question, Mr. Hendren?

Mr. Hendren: Yes, sir.

Mr. Fletcher: The exhibit you gave me, and which has just been marked Exhibit 148, has got in somebody's handwritten in ink—I assume your section—the number 2586, over to the right is the number 2586, and 2619, and I do not have a separate instrument for 2619, though your list would indicate 148 assigned to G.P.C. 2586, and 149 to 2619.

Mr. Hendren: I will have to ask Mr. Barnett what is the

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significance.

Mr. Fletcher: Well, I do not have two separate instruments. Are you offering two separate instruments?

Mr. Hendren: No, Exhibit 148 applies to contract 2586; is that correct, Mr. Barnett?

Presiding Examiner: I might point out on the copy I have the figures 2619 appear, but they are crossed out.

Mr. Fletcher: They are not crossed out on my copy.

Presiding Examiner: Off the record.

(There was a discussion off the record.)

Presiding Examiner: On the record.

Mr. Hendren: The next exhibit being offered for identification as 149 is contract 2619. I believe that will straighten out the difficulty.

Presiding Examiner: We have had marked for identification, I believe, Exhibit 148.

Mr. Hendren: That is correct:

Presiding Examiner: Now, you wish to address yourself to Exhibit 149?

Mr. Hendren: I should like to request that the other document be identified as Exhibit 149, with relation to contract 2619, consisting of 27 pages, being an amendment to gas purchase contract 2619, dated April 1, 1953, and gas purchase contract 2619, which is dated April 4, 1950.

Presiding Examiner: Very well, that will be marked for



identification Exhibit No. 149.

(Gas purchase contract No. 2619, dated April 4, 1950, and amendment to gas purchase contract No. 2619, dated April 1, 1953, were marked Mississippi River Fuel Exhibit No. 149, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, will you please refer to Exhibit 110, and I will hand you the document marked for identification as Exhibit 149, and tell me whether or not the document is a photostatic copy of the contract and the amendment to the

gas purchase contract dated April 1, 1953? A. I do not seem to have that in Exhibit 110.

Q. Have you been able to locate it in Exhibit 110, Mr. Barnett? A. Yes, sir; under the Sealy Field.

Presiding Examiner: That is Exhibit 149?

Mr. Hendren: Yes.

Presiding Examiner: In my copy are written the words "Refugio Field."

By Mr. Hendren:

Q. Is that with reference to the Refugio Field? A. Yes.

Mr. Fletcher: All he is saying is that that was misplaced under the Sealy Field. It is properly in the Refugio Field.

By Mr. Hendren:

**1232**

Q. I will hand you what has been marked for identification Exhibit No. 149 in relation to contract 2619, and ask you whether the amendment to the gas purchase contract dated April 1, 1953, and the gas purchase contract is contained in Exhibit 110? A. Yes, sir; there are other instruments with reference to contract 2619.

Q. That is contained in Exhibit 110; is that correct, Mr. Barnett? A. Yes.

Mr. Hendren: Next, I would like to have marked for identification as Exhibit 150 a document with relation to contract 1380, consisting of 26 pages, being amendment to gas purchase contract which is dated October 20, 1953, and a gas purchase contract which is dated May 29, 1950.

Presiding Examiner: What date did you say?

Mr. Hendren: The amendment is dated October 21, 1953, and the gas purchase contract is May 29, 1950.

Presiding Examiner: All right, that will be marked Exhibit 150, for identification.

(Gas purchase contract No. 1380, dated May 29, 1950,

and amendment to gas purchase contract No. 1380, dated October 20, 1953, were marked Mississippi River Fuel Exhibit No. 150, for identification.)

By Mr. Hendren:

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Q. Mr. Barnett, I hand you the document which has been marked for identification as Exhibit 150, and ask you to refer to Exhibit 110 and tell me if that is a photostatic copy of the amendment and contract 1380? A. Yes, sir; but there appears to be other instruments with relation to contract 1380.

Q. And those instruments refer to letters with relation to that contract; is that correct? A. Yes, sir.

Q. And that is contained in Exhibit 110? A. It is all in Exhibit 110.

Mr. Fletcher: For the purpose of clarity of the record, counsel's statement was that there were others which were letters, but they are instruments which are amendatory of the contract.

Mr. Hendren: I could not tell that without reading it.

Mr. Fletcher: I do not want the record to reflect that it is a mere correspondence about it, because I am quite sure that is inaccurate.

Presiding Examiner: Well, you can make a contract by letter. I think everyone recognizes that.

Mr. Hendren: I would like to have next marked for identification a document with relation to contract No. 2606, as Exhibit 15, consisting of 10 pages, being amendment to gas purchase contract 2606, dated November 26, 1949, and gas purchase

1234

contract 2606, dated November 3, 1947.

Presiding Examiner: Very well, that will be marked Exhibit No. 151, for identification.

(Gas purchase contract No. 2606, dated November 3, 1947, and amendment to gas purchase contract No. 2606, dated November 26, 1949, were marked Mississippi River Fuel Exhibit No. 151, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, will you please refer to Exhibit 110, and I hand you the document marked for identification as Exhibit 151, and ask you if that is a photostatic copy of the contract and amendment with relation to contract 2606? A. Yes, sir; but there are other documents with relation to contract 2606.

Q. Contained in Exhibit 110? A. Yes.

Mr. Hendren: Next, I would like to have marked for identification as Exhibit 152 an instrument relative to contract 2568, consisting of 10 pages, the first being amendment to gas purchase contract 2568, dated November 26, 1949, and gas purchase contract 2568, dated April 27, 1944.

Presiding Examiner: That will be marked Exhibit 152, for identification.

(Gas purchase contract No. 2568, dated April 27, 1944, and amendment to gas purchase contract No. 2568, dated November 26,



By Mr. Hendren:

1949, were marked Mississippi River Fuel Exhibit No. 152, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I hand you the document marked for identification as Exhibit 152, and ask you to refer to Exhibit 110, and ask you if that is a photostatic copy of the contract and amendment relative to contract 2606?

Presiding Examiner: Should not that be 2568?

Mr. Hendren: Yes, sir; 2568, excuse me, Mr. Examiner. I was looking at the preceding exhibit.

The Witness: Yes, sir; but there appear to be other instruments in contract 2568.

By Mr. Hendren:

Q. Contained in Exhibit 110? A. Yes, sir.

Mr. Hendren: I would next like to have marked for identification as Exhibit No. 153, a document consisting of one page, being a letter dated July 23, 1951, from United Gas Pipe Line Company to Union Producing Company, with relation to contract 2595.

Mr. Fletcher: Mr. Hendren, in your list you say Exhibit 153 is the Fox Field, gas purchase contract No. 2649, then in parentheses you say G.P.C. 2595, whereas written on it in the upper righthand corner is G.P.C. 2635. Somebody has added in ink since this photostat has been made G.P.C. 2595.



I suggest you get that straight because there is a conflict there.

Mr. Hendren: If you will look at the first paragraph of the letter, Mr. Fletcher, the letter states it refers to contract 2595.

Presiding Examiner: Yes, the first paragraph refers to contract No. 2595, but over in the righthand top corner there are the words "G.P.C. 2635." Now, I do not know what the relationship is between these two contracts.

Mr. Hendren: Perhaps the witness could explain that.

Mr. Fletcher: May I ask a clarifying question?

Presiding Examiner: Yes.

Mr. Fletcher: Mr. Barnett, what is the meaning in the upper righthand corner of the legend "G.P.C. 2635"?

I direct your attention, Mr. Barnett, to the first two

paragraphs and ask you if that does not answer the question of the numbers?

The Witness: It appears to, Mr. Fletcher.

Presiding Examiner: Is this instrument which you have asked to have identified as Exhibit 153, does that in your records show up as a gas purchase contract No. 2635?

Mr. Fletcher: It seems to me, Mr. Examiner, that the exhibit marked for identification 153, cancels gas purchase contract 2595, and the applicable contract, in accordance with the meaning of the first three paragraphs becomes, I take it,

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G.P.C. 2635.

Presiding Examiner: That is what I understand.

I gather, too, from reading the instument, in the first paragraph you refer to a contract involving gas produced in certain lands and leaseholds in Greta, Tom O'Connor, and Fox Fields, and the second paragraph just as Greta and Tom O'Connor. So Exhibit 153 refers to somewhat different fields.

Mr. Fletcher: Then when you read the third paragraph you see the ones above are cancelled, and the new one is by virtue of this instrument effective, and that obviously is G.P.C. 2635.

Presiding Examiner: Yes. Now, of course, I have not had an opportunity to examine and read all of these contracts that have been identified. One of the things in my mind is in these amendments are there changes in the terms of the contracts?

Mr. Fletcher: This particular contract I have no knowledge of, Mr. Examiner, but frequently what they do is to rewrite an entire contract, and from any general knowledge I would assume that that is what this represents, that the entire matter has been recost and rearranged and rewritten, and as rewritten it has superseded the old contract

which becomes cancelled by the operative effect of the new contract referred to in this letter.

Presiding Examiner: Yes, but in some instances is it correct that the term of the contracts—some of them go to 1962,

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as referred to by counsel——

Mr. Fletcher: Frequently the terms are extended, Mr. Examiner, and sometimes the terms are not extended.

Presiding Examiner: I see. I wanted to get an idea of what changes there might be, because as I understand United's position, numerous objections to the receipt in evidence of these exhibits have been made. Price alone might not be the reason for the change. There might be other changes.

Mr. Fletcher: Yes, of policy.

Presiding Examiner: Questions of policy. Questions of length of the term of the contract?

Mr. Fletcher: Right.

Presiding Examiner: And possibly other things?

Mr. Fletcher: Right.

Presiding Examiner: And is that one of the reasons that you do not consider these exhibits which have been marked for identification to be a real picture of all of the contracts as a whole?

Mr. Fletcher: That is correct, because we say that these changes, whatever the changes are, and even in instances if there be anywhere the terms of the contract are in no fashion changed, then maybe only the price, that that has a setting in a context of policy in which the entire thing is understood and explainable, and to carve it out is to get an isolated segment of it that is meaningless, and when separated from the body

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of the context results in a distorted picture.

Presiding Examiner: In other words, as far as United Gas Pipe Line Company, as to a policy with regard to contracts which it makes for obtaining gas, it may apply that policy uniformly in different situations?

Mr. Fletcher: Precisely so, yes.

Presiding Examiner: All right, you may go ahead. I just wanted to clarify in my mind Mr. Fletcher's objection.

Mr. Hendren: May we have the document marked for identification as Exhibit 153?

Presiding Examiner: Yes, we will mark Exhibit 153, for identification.

(Letter dated July 23 1951, from United Gas Pipe Line Co. to Union Producing Company, with relation to contract 2595, was marked Mississippi River Fuel Exhibit No. 153, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will hand you the document which has been marked for identification as Exhibit 153, and ask you to refer to Exhibit 110 and tell me whether or not that is a photostatic copy of a letter dated July 23, 1951, found in that exhibit? A. That is a photostatic copy of a letter found in Exhibit 110, but it is not a complete picture of the contractual relation.

1240

Q. But that is found in Exhibit 110, is it not, Mr. Barnett? A. That letter agreement is found in Exhibit 110.

Mr. Hendren: I would like to have next marked for identification as Exhibit 154 a gas purchase contract with relation to contract 2596, consisting of four pages, dated March 26, 1946.

Presiding Examiner: That will be marked Exhibit 154, for identification.

(1240)

(Gas purchase contract No. 2596, dated March 26, 1946, was marked Mississippi River Fuel Exhibit No. 154, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will hand you the document marked for identification as Exhibit 154, and ask you to refer to Exhibit 110 and advise me whether or not that gas purchase contract is a photostatic copy of the contract found in Exhibit 110? A. It is a photostatic copy of the contract 2596, as found in Exhibit 110, but I think it has since been superseded.

Q. You mean the contract has been superseded? A. I feel sure that it has.

Q. But it is found in Exhibit 110; is that right, Mr. Barnett? A. Yes, sir.

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Mr. Hendren: I would next like to have marked for identification as Exhibit 155 a gas purchase contract with relation to contract 2649, consisting of 23 pages; the contract being dated September 2, 1952.

Presiding Examiner: Very well, that will be marked Exhibit 155, for identification.

(Gas purchase contract No. 2649, dated September 2, 1952, was marked Mississippi River Fuel Exhibit No. 155, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will hand you the document which has been marked for identification as Exhibit 155, and ask you to refer to Exhibit 110 and tell me whether or not this document is a photostatic copy of the gas purchase contract 2649? A. It is a photostatic copy of contract 2649, as found in Exhibit 110, but it does not appear to be all of contract 2649 or the contracts which it supersedes.

Q. But it is the gas purchase contract as identified, dated September 22, 1952? A. Yes, sir.

Mr. Fletcher: Mr. Examiner, I hate to interrupt, but for the purpose of the questions you just asked me, plus my running objection, I refer you to paragraph 20 on page 18 of Exhibit 155, for identification, which will give you an insight on some of the matter that I just tried to bring to your

**1242**

attention.

Presiding Examiner: Paragraph 20, is it?

Mr. Fletcher: Yes, on page 18 of Exhibit 155, for identification.

Presiding Examiner: In other words, as I understand it, this would cover something more than had been covered before?

Mr. Fletcher: Yes, sir; and is a part of the continuing picture that I was trying to suggest to you in response to your question.

Presiding Examiner: So the price of the gas may depend on various factors other than just the fact that they had sold gas, some of which had been sold previously at a lower price?

Mr. Fletcher: That is correct, yes.

Presiding Examiner: Very well.

Mr. Hendren: Next, I would like to have marked for identification as Exhibit 156 a document, being a letter dated December 1, 1954, with relation to contract 2540 to the Union Producing Company, from the United Gas Pipe Line Company, the entire document consisting of 17 pages, an amendment to gas purchase contract 2540, which is dated May 18, 1953, another letter dated July 8, 1948, in relation to that contract, and gas purchase contract 2540, dated November 7, 1940.

Presiding Examiner: All right. Now, let us see. I have a contract No. 2540 that appears to have been executed on

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November 7, 1940, and a letter dated July 8, 1948, a one-page letter, and an amendment to gas purchase contract dated May 18, 1953, which was executed on that date, and a letter agreement dated December 1, 1954?

Mr. Hendren: That is the whole of the documents in Exhibit 156.

Presiding Examiner: That will be marked Exhibit No. 156, for identification.

(Letter dated December 1, 1954, from United Gas Pipe Line Co. to Union Producing Co.; amendment to gas purchase contract No. 2540, dated May 18, 1953; letter dated July 8, 1948, and gas purchase contract No. 2540, dated November 7, 1940, were marked Mississippi River Fuel Exhibit No. 156, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, will you please refer to Exhibit 107, and I will hand you the documents that have been identified as Exhibit 156, and tell me whether or not those documents are included in Exhibit 157 with relation to contract 2540? A. Yes, sir.

Mr. Hendren: I would next like to have marked for identification as Exhibit 157 a document consisting of 36 pages with relation to contract 1169, being amendment to gas purchase contract dated May 8, 1953; another amendment to gas purchase contract 1169, dated July 27, 1949, gas purchase contract 1169,

1244

which is dated March 30, 1948.

Presiding Examiner: That will be marked Exhibit 157, for identification.

(Amendment to gas purchase contract No. 1169, dated May 8, 1953; amendment to gas purchase contract No. 1169,

dated July 27, 1949, and gas purchase contract No. 1169, dated March 30, 1948, were marked Mississippi River Fuel Exhibit No. 157, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will ask you to refer to Exhibit 107, and I hand you the document which has been marked as Exhibit 157, and tell me whether that document is a photostatic copy of the gas purchase contracts and amendments thereto with relation to contract 1169? A. Yes, sir.

Mr. Hendren: I would next like to have marked for identification as Exhibit 158 a document with relation to contract 2578, containing 87 pages, being amendment to gas purchase contract 2578, dated October 1, 1951; gas purchase contract 2578, which is dated March 13, 1945.

Presiding Examiner: That will be marked Exhibit 158, for identification.

(Gas purchase contract No. 2578, dated March 13, 1945, and amendment to gas purchase contract No. 2578, dated October 1, 1951, were marked Mississippi River Fuel Exhibit No. 158, for



identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will ask you to refer to Exhibit 107 with relation to contract 2578, and I will hand you the document marked for identification as Exhibit 158 and ask you if that is a photostatic copy of the contract and amendment to the contract 2578? A. Yes, sir; but there appears to be other instruments in contract 2578.

Q. And that is contained in your Exhibit 107, Mr. Barnett? A. Yes, sir.

Mr. Hendren: I would next like to have marked for identification as Exhibit 159 a document with relation to contract 2644, containing 18 pages, being a gas purchase contract dated April 15, 1952.

(1245)

Presiding Examiner: That will be marked Exhibit No. 159, for identification.

(Gas purchase contract No. 2644, dated April 15, 1952, was marked Mississippi River Fuel Exhibit No. 159, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will hand you the document marked for identification as Exhibit 159, and ask you to look at Exhibit 107 and tell me whether or not that is a photostatic copy of the

1246

gas purchase contract 2644? A. That is a photostatic copy of our gas purchase contract 2644, as found in Exhibit 107. I believe there are other instruments also in that contract.

Q. Found in Exhibit 107? A. Yes, sir.

Mr. Hendren: I would like to have next marked for identification as Exhibit 160 a document with relation to contract 2551, consisting of 22 pages, the first being an amendment to gas contract 2551, dated the 16th of February, 1949, a gas purchase contract, 2551, which is dated February 28, 1942.

Presiding Examiner: That will be marked Exhibit 160, for identification.

(Amendment to gas purchase contract No. 2551, dated February 16, 1949, and gas purchase contract No. 2551, dated February 28, 1942, were marked Mississippi River Fuel Exhibit No. 160, for identification.)

By Mr. Hendren:

Q. Mr. Barnett, I will hand you the document which has been marked for identification as Exhibit 160, and ask you to refer to Exhibit 107 and tell me whether or not that is a gas purchase contract 2551, and the amendment relating thereto? A. Yes, sir.

Mr. Fletcher: May I ask a clarifying question?

Presiding Examiner: Yes, sir.

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Mr. Fletcher: Mr. Barnett, on page 2, reference is made to an amendment dated July 18, 1947.

Presiding Examiner: Are you referring to page 2 of Exhibit 160?

Mr. Fletcher: Page 2 of Exhibit 160, for identification, of the amendment dated 16 February 1949.

Is that amendment in Exhibit 107?

Presiding Examiner: Would you read Mr. Fletcher's question back, please?

(The question was read.)

Mr. Hendren: Is that amendment in 107, Mr. Barnett?

The Witness: It does not appear to be.

Mr. Hendren: Your Honor, we will have to pass out additional copies of exhibits.

Presiding Examiner: You have additional exhibits?

Mr. Hendren: Yes.

Mr. DaPra: Before you move on, Mr. Hendren, I notice in Exhibit 159, for identification, there is written in ink in the upper lefthand corner, the words "Carthage Field," and in the index that you have supplied for the convenience of the staff Exhibit 159 refers to the Willow Springs Field.

Mr. Hendren: May Mr. Barnett can clarify that up, Mr. DaPra.

The Witness: Where do you see Carthage Field?

Mr. DaPra: I think this was put on by Mississippi or who-

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ever did the photostating.

On Exhibit 159, for identification, you have Carthage Field, G.P.C. 2644, written in ink, but on the slip sheet which Mississippi supplied it shows Willow Springs Field.

(1248)

By Mr. Hendren:

Q. Is Willow Springs Field a part of the Carthage Field? A. No, sir.

Q. And that exhibit refers to the Willow Springs Field rather than the Carthage Field? A. Gas purchase contract 2644 is in the Willow Springs Field.

Mr. DaPra: And not in the Carthage Field?

The Witness: No.

Mr. DaPra: That is all I want to know.

Mr. Fletcher: I suggest you correct that, then, Mr. Hendren, if you have it written in ink on the one you gave to the court reporter.

Presiding Examiner: On 160 the words "Carthage Field" appear on the copy of the exhibit that I have, but in the list of exhibits supplied by Mississippi, under 160 are written the words "Willow Springs Field." What is the situation with regard to 160?

Mr. Hendren: Let me clarify that.

By Mr. Hendren:

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Q. Mr. Barnett, will you please refer to Exhibit 160 with relation to contract 2551.

Is that gas in the Carthage Field or the Willow Springs Field? A. That is in the Willow Springs Field.

Mr. Hendren: Then we will delete the reference to Carthage Field on 159 and 160.

Mr. Fletcher: As a matter of protection for the record, where any of these exhibits have in the upper lefthand corner written in ink a statement as to the field, wouldn't it be better to let the record control, so that there is not any conflict—

Presiding Examiner: I think perhaps what the record should show is the words written in the upper lefthand part of these exhibts is not language supplied by United

Gas Pipe Line Company, and the photostats which have been marked for identification are only meant to be offered as photostats as actually received from United Gas Pipe Line Company, and the words in the lefthand corner are merely words of convenience and not part of the record.

Mr. Hendren: That is correct.

Now, Mr. Examiner, we have some more exhibits. If it would be convenient now to take a morning recess, we could pass them out.

Presiding Examiner: Could you give me any idea how many

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additional exhibits you intend to have marked for identification?

Mr. Hendren: I was mistaken, Mr. Examiner; Mr. Lippitt tells me that is all of them. I thought we had some more.

Presiding Examiner: Well, I noticed on this mimeograph list of exhibits which you were good enough to give me this morning, the last was 160. I was a little surprised. You have no additional exhibits that you wish marked for identification at this time?

Mr. Hendren: No, that is correct. I thought there were some more; excuse me.

Presiding Examiner: All right. Now, we can take our ten-minute morning recess.

(Whereupon, at 11:20 a.m., a recess was taken until 11:30 a.m. of the same day.)

Presiding Examiner: The hearing will please come to order.

Are you ready to proceed, Mr. Hendren?

Mr. Hendren: Mr. Examiner, we worked real late last night getting these exhibits that we have offered this morning for identification in shape so they could go into the record in a more expeditious manner, and I guess we did a little better job than we thought we would, because we

thought this session would last until noon. We have been in contact with Mr. Dougherty, general counsel for Mississippi, and he will be here at 2 o'clock.

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Our plan is, and we have discussed it with Mr. Fletcher, is to go back through these documents that have been identified where they refer to other base contracts. Mr. Fletcher has perhaps rightly suggested that we do not give the entire contract picture. And we would extract from the exhibits containing the contracts with United those base contracts. Some of them we believe to be alike on the printed forms; where it would be less burdensome to the record we might be able to stipulate with United that we could put a sample of the contract in and a stipulation that other numbered contracts are the same as that contract.

We have not checked it carefully, but Mr. Fletcher tells me, and I am sure that he is right, that there are slight changes in these contracts that back up these exhibits that we have supplied for the record, and we would have to offer them, but in order to expedite the proceedings it seems to me that we could go over these exhibits we have offered where they do refer to other contracts, have Mr. Barnett identify those contracts in the exhibits. Your Honor might give them a supplemental number.

Suppose they apply to the exhibit that has been marked for identification as 125, there might be a contract referred to there that might be given an identification number 125-A. Then we will supply to the record the copies of those particular contracts that back up these particular exhibits that are

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referred to in the exhibits we have marked for identification. For that reason I would like to ask for a recess until 2 o'clock when Mr. Dougherty comes, to give us an oppor-

tunity to go through these exhibits we have marked for identification where there are other contracts that are referred to in those exhibits, and we can try to work out some plan that those might be supplied for the record in some systematic fashion, so that we could keep track of them with some type of identification number that would refer back to the number Your Honor has assigned to these prticular documents for identification.

Presiding Examiner: Mr. Fletcher.

Mr. Fletcher: Mr. Examiner, as I understood from talking to Mr. Hendren, it was his purpose where he has extracted—just take any exhibit number, for the sake of illustrating my understanding of it: We will say the exhibit I notice in front of me, 138, and as I understood it, it was his purpose to go back and extract every instrument that referred to the gas purchase contract 106 on which is the subject matter of Exhibit 138, for identification, and I told him that if he did so in order to make the record complete I would, number 1, stipulate with him, as he requested, that as far as I was concerned he could mark them and photostat them later, and supply them to the Examiner under such terms as the Examiner said.

In other words, the purpose of the stipulation was to relieve him of the urgency of having at this time to have the



photostat present.

Secondly, he asked me about a stipulation with respect to some of these printed forms. Now, what I told him was this, and Mr. Lewis, who is equally, if not more experienced with some of those printed forms than I am, confirms it, and our experience is this: Those printed forms generally —I have not checked each particular one—but, generally, it always used to be in the upper lefthand corner somewhere, had a number or a symbol, and a date, and wherever the symbol and the date was the same the form was the same.

(1253)

Now, some lawyer would get ahold of it and he would change something somewhere in that printed form, and have it printed, and there would be a different symbol, and I told Mr. Hendren to reduce the record that if he had some of those printed forms where he could identify the symbol in such fashion that then he could say, assuming whatever the facts were, that this particular form "X" would be applicable to contracts numbers so and so, and if there were then any difference—well, the only differences that would be in that particular case would be pressure base, price, or terms, and he confirmed that there were differences in that respect from his own examination of it, and I told him that insofar as those symbols indicated the identical form I would be willing to stipulate that that particular form was applicable to certain numbers, gas purchase contract numbers, as, for instance, again for the sake of illustrating

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what I mean, G.P.C. 1060, which is the subject matter of Exhibit 138, for identification, and we might be able to reduce the record in that fashion.

I am quite content to do that, and so far as I am concerned I am further willing to stipulate that he may mark and identify, subject to Your Honor's approval, of course, because we can only agree, but you can only dispose, and subject to Your Honor's willingness, I will agree that he can have any time that he sets and supply the photostats for the record.

Mr. Hendren: I believe that would expedite time, and that states the procedure.

Mr. Fletcher: Now, I have not consulted the staff on that. I assume Mr. Hendren has.

Mr. Hendren: I have not consulted Mr. DaPra.

Mr. DaPra: I have not been consulted on this matter except I had informal conferences with United and Mis-

sippi yesterday when we were trying to find some way of expediting the presentation of the material here with reference to the contracts which United had presented in response to the subpoena.

Now, from what I understand from the statement of both Mr. Hendren and Mr. Fletcher, I certainly would have no objection to that mode of operation. I simply am interested in the Commission and the Examiner having the most complete picture possible of the facts in this case, so that the Commission can dispose of the issues which have been raised by Mississippi's

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contentions with respect to Opinion 277, and it seems to me that the method which apparently Mr. Fletcher and Mr. Hendren have agreed upon seemed to be suitable.

As I understand it, the entire contracts will be supplied in certain cases, and in certain cases where forms of contracts are used, if a certain form is always the same they will simply present the changed portion in some sort of skeletonized fashion.

I have no objection to that.

Mr. Fletcher: I should say, Mr. Examiner, that I just took it for granted that it would be understood that I do not by making the stipulation waive my objection. I certainly, of course, would waive that part of it which would go to the want of supplying that which would be covered by the proposed stipulation, but basically the stipulation would necessarily be subject to my position of objecting.

President Examiner: This is merely a way of affording Mississippi the opportunity of presenting contracts in full where it has been pointed out that the exhibit which has been identified does represent the contract in full. Isn't that really the substance of it?

Mr. Fletcher: Yes, sir.

(1255)

Mr. DaPra: And, as I understand it, Mississippi will makes its determination as to what contracts it wishes to present in full or in part subsequent to the end of this session

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of the hearing?

Mr. Hendren: That is correct.

Presiding Examiner: I understood that they would.

Would I be incorrect in assuming that Mississippi would in cases where the contracts were not presented in full, present them in full in all cases?

Mr. Hendren: Well, in the cases, Your Honor, applying to these particular exhibits. We went through them last night and tried to extract from the exhibit what contract they referred to. We have gotten through a portion of them last night and took off the contract numbers, the book or exhibit in which they might be found—we did not want to tear these books up again because it is a terrible job getting them back together, and Mr. Barnett would have a hard time finding that particular contract we referred to, and our plan was to go through them and determine what contract documents would be needed to complete these exhibits as to having the full contract, then Mr. Barnett could identify them.

Presiding Examiner: In other words, what Mississippi intends to do is where it finds it has a contract that refers to another contract which preceded, to present that whole contractual picture in full?

Mr. Hendren: That is correct.

Presiding Examiner: From Mississippi's standpoint, it presents that particular contractual relationship in full,

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not from United's standpoint, and, of course, United reserves all of its rights which it has heretofore expressed, and may express again.

Mr. DaPra: I imagine all of the parties reserve their rights in this respect.

Mr. Hendren: I think we do.

Presiding Examiner: Well, I think we can work out some way of doing this. I assume that when you mark exhibits in this fashion they will be produced very promptly?

Mr. Hendren: Yes, sir; we have had to have them photostated at night.

Presiding Examiner: I do not like the idea of reserving exhibit numbers.

Mr. Hendren: Mr. Barnett could identify the document and that number could be assigned to it, if that is satisfactory.

Mr. Fletcher: If you will pardon me for interrupting, Mr. Hendren, what I thought you had in mind was lets us take, for instance, Exhibit No. 100, and you have offered——

Presiding Examiner: I think I get the idea.

Mr. Fletcher: What I mean is, you would put a mark on it right here, what Mr. Barnett produced. Then when they photostated that subsequently in accordance with Your Honor's position, the exhibit number would appear on the photostat and the record that way would not be left open.

Presiding Examiner: I think that would be a much better.



way, and then you see we do not have to reserve any exhibit numbers. All that would be left is the furnishing of necessary copies to the parties, to the reporter, and to me.

Mr. Fletcher: That is what I intended. Otherwise, there would be no way of knowing what the record was.

Presiding Examiner: This business of reserving ex-

hibit numbers has worked out very sadly in a number of matters we have had here. That is why I did not want to go into that.

Mr. Hendren: I did not want that done, Mr. Examiner. The Exhibits 107 and 108—those exhibits contain all of the contracts.

Presiding Examiner: Now, on the next point, I wish to discuss, do I understand that you wish to have Mr. Dougherty examine this witness this afternoon, rather than examine him yourself?

Mr. Hendren: Yes, sir. He will be here at 2 o'clock, and Mr. Dougherty may wish to have a few more of these contracts extracted. I am not too certain about that.

Presiding Examiner: In any event, you would wish Mr. Dougherty to carry on from this point, if I gather what the situation is?

Mr. Hendren: He will be here at 2 o'clock.

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Afternoon Session

Presiding Examiner: The hearing will please come to order.

Mr. Hendren.

Mr. Hendren: If it please the Commissioner, I want to report—

Presiding Examiner: Thanks for promoting me.

Mr. Hendren: Mr. Examiner—I think you should be promoted—Mr. Dougherty, the other counsel for Mississippi, called during the recess. He is standing by at the New York terminal to catch a plane, for the following plane, which would put him into the airport here at 3 o'clock. It would be after that that he would get here.

But following our discussions this morning about attempting to expedite the hearing by identifying the documents that we need to back up the exhibits which have

heretofore been identified, we worked during the noon hour attempting to get that work done. We believe that it would be expeditious to the hearing if we could recess until the morning, and we could spend the afternoon in cooperation with United's people and the staff getting these documents identified in the exhibits so that we could expeditiously put these into the record as far as identification is concerned.

I have discussed it with Mr. Fletcher and Mr. DaPra during the noon recess, and I believe it would be helpful if we could



do that and we could go forward then in the morning if we had the exhibits properly marked, and put the balance of the contracts into the record for identification that Mississippi would like to put in.

I would like to ask that the case be recessed over until in the morning for that purpose.

Mr. Fletcher: Mr. Examiner, I told Mr. Hendren that while I hated to see the thing recessed, I am in trouble—on Friday I am going to stand with my coat tails straight out in the wind and take off for Texas on account of the commitment I have down there. I do not know whether this will delay it, but certainly we cannot do anything this afternoon.

Presiding Examiner: I was thinking if Mr. Dougherty would get here by 3 o'clock or 3:30 we could at least do an hour this afternoon.

Mr. Fletcher: That is quite agreeable to me.

Mr. Hendren, of course, is under this necessity: Those contracts which he has taken out of Exhibits 100 to 111, for identification, which he now determines he will make complete in accordance with our conference on the record here this morning, he now is faced with the necessity of identifying and organizing the other material that he proposes to offer, and for that reason I was somewhat mollified

about it because that at least would be getting forward, and I told him that I would consent to the recess.

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Now, if the Examiner thinks that we can recess until 3 or 3:30, or any other time, why, of course, I am quite agreeable to.

As I said this morning, we can agree but only you can dispose. We make any stipulation we make subject to the approval of the Examiner. If you think it is better to do it the other way, of course we can conform.

Presiding Examiner: Well, every lawyer knows that this case has been going on for a very long time, and, of course, I want to accommodate Mississippi as much as would be proper under these circumstances.

Now, what is the position of the staff?

Mr. DaPra: I had a conference with Mr. Hendren and Mr. Fletcher, and my position was I had no objection to the recess, whether it be until tomorrow morning or Friday morning.

Now, being aware of Mr. Fletcher's problems and of the problems of Mr. Hendren, I cannot see any objection to going over until tomorrow morning.

Now, like all the rest of the parties and the Examiner, I want to see this hearing wound up as expeditiously as possible. Now, we had an example this morning of how fast you can put material in where you have catalogued it correctly, and appropriately overnight, and I believe that if Mississippi is given this opportunity to do the work that they have to do with respect to the material that they wish to offer, we can move ahead much

**1263**

more expeditiously tomorrow morning and try to wind this case up tomorrow some time.

Presiding Examiner: Well, I have this in mind: If we

grant a recess for an hour or an hour and a half some of this work, if not all of it, may be accomplished. I am going to await Mr. Dougherty's arrival which I hope will be soon.

Now, as I understand it, he may or he may not have caught the 12 o'clock plane, we do not know. If he was lucky enough to get on he will probably be here very shortly, and, if not, he will probably be here shortly after three. I think what we might do is recess until 3 o'clock, find out whether or not Mr. Dougherty has arrived. If he has not arrived we can take another recess until 3:30 and he will probably be here by that time if he got the next plane.

In the meantime the hour or hour and a half might very well be employed toward the purposes which you have indicated, Mr. Hendren.

Mr. Hendren: Yes, sir.

Presiding Examiner: I suggest that we recess. I suppose that you can use that time right here in this room to work on those problems?

Mr. Hendren: Yes, sir.

Presiding Examiner: I am very anxious to try to dispose of this matter promptly for reasons known to you all. I would suggest that we recess until 3 o'clock, at which time we will

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survey the situation again and see whether Mr. Dougherty has been able to make Washington or not, and, if necessary, we will have a further recess.

In the meantime, I think we will recess until 3 p. m. and you can go ahead and work on these problems.

Mr. Hendren: Yes, sir.

(Whereupon, at 2:07 p. m., a recess was taken until 3 p. m. of the same day.)

Presiding Examiner: The hearing will please come to order.

Mr. Hendren.

Mr. Hendren: Mr. Examiner, Mr. Dougherty just came in. We would like to have the hearing postponed until 3:30 relative to the preparation of the exhibits.

Presiding Examiner: I assume there will be no objection to that?

Mr. DaPra: Not from the staff.

Presiding Examiner: There being no objection, the matter will be recessed until 3:30 today.

(Whereupon, at 3:01 p. m., a recess was taken until 3:30 p. m. of the same day.)

Presiding Examiner: The hearing will please come to order.

Mr. Dougherty: If the Examiner please, I wish to express my appreciation of your considerate kindness in delaying the proceedings until I could return. It was absolutely necessary for me to return to my office yesterday and be there this morn-



ing, and I do appreciate it very much.

We have made a further attempt to discuss with counsel for United Gas Pipe Line Company some method by which we could at least, to some degree, limit the amount of volume of these contracts in question, but it seems to me that it is impossible to arrive at any satisfactory solution, so we are faced with the problem and have reluctantly come to the conclusion that we will introduce in evidence all of the contracts, and that we think that can be done by introducing the volumes as they were identified when Mr. Barnett produced the contracts pursuant to the subpoena, and did testify that they were the contracts called for.

Presiding Examiner: That is Exhibits 100 to 110, inclusive?

Mr. Dougherty: Yes.

So we will now offer in evidence Exhibits 100 to 110, inclusive.

it is, of course, recognized that we do not have the appropriate number of copies here, but counsel for United and for the staff have generously suggested that we might get those done and turned into Your Honor as quickly as we might do so. We will, of course, proceed on that basis, and they can be submitted, we think, within a few days in any event.

We, of course, have a great number of these that have been done. Of course, the record copies of the other exhibits, 111 through 160, we would not offer. They have been taken by the

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reporter, and I think it is not very practical—

Presiding Examner: They have just been marked for identification.

Mr. Dougherty. Yes, but I think it is probably not practical to get those back and utilize them in making up these volumes.

Presiding Examiner: Well, when you come to discuss the matter in your brief I assume that you can refer to any contracts that you want to refer to?

Mr. Dougherty: So we do now formally over those.

Presiding Examiner. Exhibits 100 to 110, inclusive?

Mr. Dougherty: Yes, sir.

And I have a few more questions of Mr. Barnett, but I thought we would get this out of the way.

Presiding Examiner: Well, we will pass on this offer now.

Mississippi has offered in evidence Exhibits 100 to 110, inclusive. Is there any objection by any party to the offer made by Mississippi?

Mr. Fletcher: No objection.

Mr. DaPra: No objection on the part of the staff, Your Honor.

Presiding Examiner: Exhibits Nos. 100 to 110 will now be received in evidence.

(The documents heretofore marked Mississippi River Fuel Exhibits Nos. 100 to 110, inclusive, were received in evidence.)

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Presiding Examiner: Very well, you may continue, sir. Whereupon,

**Charles C. Barnett**

resumed the witness stand, and was examined and testified as follows:

Direct Examination (Continued)

By Mr. Dougherty:

Q. Mr. Barnett, I am going to ask you a general question. I do not know whether it is capable of being answered generally, but I am interested to know whether in making the negotiations for renewals of contracts or amendments to contracts, as a result of which the prices were increased, were the negotiations first carried on with the non-affiliated producers who sell gas to United Gas Pipe Line Company, or were they first carried on between United and Union, or possibly both methods may have been used?

As I said, I do not know to what extent you can give a general answer to that, but I would like information on it.

Presiding Examiner: Mr. Dougherty, could you specify the time period that the question is addressed to?

Mr. Dougherty: Well, it is addressed to these amendments to the contracts as they are contained in the various exhibits, and that would be, say, commencing about 1949, I believe that period of time.

A. Your Honor will recall, we discussed one of these

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amendments made in 1949, another made in 1951 that had a lot of numbers at the top.

Presiding Examiner: Well, some of these exhibits which were marked for identification, which are contained within Exhibits 100 to 110, inclusive, go back to 1937, which I believe was a time when this witness was not even in the employ of United.

Mr. Dougherty: Well, I think those were the original contracts. I believe the amendments, at least almost all of the amendments whereby the price was increased, started in 1947, I believe.

For example, in the Monroe Field, the letter referred to was in 1947.

Presiding Examiner: In other words, if my recollection serves me well, this witness became employed by United in 1945; is that correct?

The Witness: I was employed by United in 1937. I started to work with the gas supply department in the latter part of 1945.

Presiding Examiner: Prior to that time you had nothing to do with gas supply; is that right?

The Witness: That is right.

Presiding Examiner: So 1945 would be the first that you would know about any contracts for the obtaining of gas for United; is that correct?

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The Witness: Yes, sir.

Presiding Examiner: And is your question limited to the time in 1945 when the witness became employed in the gas department?

Mr. Dougherty: Oh, yes.

Presiding Examiner: From 1945 to what time?

Mr. Dougherty: Up to the last amendments, in 1952 I believe some of them are, maybe 1953, whatever that period of time is involved in the contracts.

Presiding Examiner: No, Mr. Fletcher.

Mr. Fletcher: Mr. Examiner, I would like to suggest this, in response to the Examiner's question as to the time to which the question referred, the answer was a dual answer that was referred to the Exhibits 100 to 110, and then Mr. Dougherty stated 1947, and then we had the question by Your Honor.

I call your attention to the fact that the subpoena which was applied for, and which was issued, asked that contracts be produced which were in effect in 1950, and all amendments since that time. So the Exhibits 100 to 110 were prepared in response to the subpoena, and they would not be complete for anything prior to 1950.

Now, they have in them the contracts in effect in 1950, so it seems to me that the question is objectionable in its present form because it refers to two contrary things. Exhibits 100 to 110 would not reflect, for instance, contracts in 1949 that



would not have been applicable in 1950, so it seems to me that if the question is to be related to the scope of the subpoena and to Exhibits 100 to 110, it would have to be related to contracts effective in 1950 and amended since.

Presiding Examiner: Well, I do not think Mr. Dougherty would have to be limited in asking this witness questions to what the subpoena called for, but I am not clear in my own mind what the question is that is being put to the witness.

Mr. Fletcher: I did not mean to suggest that, Your Honor. What I meant to suggest was that the question would be contradictory on its face if it at one time referred to Exhibits 100 to 110, and at the same time called for something prior to the applicable critical period covered by those exhibits.

Mr. Dougherty: Well, let me withdraw that question and ask a specific question which I think possibly, then, could lead us to something a little easier.

By Mr. Dougherty:

Q. Mr. Barnett, referring to Exhibit 100, and to the document that we find under the Floyd Field, a letter dated July 18, 1947, which reads as follows:

"Union Producing Company, Shreveport, La. Gentlemen:

"We have agreed with you that effective 7 a. m., June 26, 1947, the price to be paid you for gas thereafter purchased from you under the provisions of the gas purchase contracts now in effect between our companies covering your leases in the

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fields hereinafter referred to is increased to 4 cents per thousand cubic feet. The fields above referred to are the following: Monroe, Floyd, Lisbon, Lake Bistineau, and Sligo, in the State of Louisiana; Willow Springs Field in the State of Texas, and Joaquin Field in the States of Louisiana and Texas.

"If the foregoing sets forth correctly our agreement with respect to the matter, will you please sign the letter in duplicate in the space provided below for your signature, and return one copy thereof to us.

"Very truly yours, United Gas Pipe Line Company, by M. A. Abernathy, Vice-President.

"Accepted and agreed to this 18th day of July, 1947, Union Producing Company, by H. R. Bennett, Vice President."

That closes the letter.

My question, Mr. Barnett, is did you have anything to do with the negotiating or fixing of that 4-cent price referred to? A. I did not have anything to do with it, but I am generally familiar with it.

Q. With respect to the Monroe Field, was that price agreed to with other producers not affiliated with United? A. It is today

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Presiding Examiner: You will recall the letter was 1947.
The Witness: In 1947 I do not believe it was.

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By Mr. Dougherty:

Q. So in that instance the change to 4 cents would have been made with Union prior to a similar change to 4 cents being made between United and non-affiliated producers? A. In this case, I believe that is correct.

Q. Now, would you know whether that is true with respect to the other fields mentioned as to all contracts that were in effect which would be prior to the effective date, namely, June 26, 1947? A. I would think so in the case of all of those fields that it was.

Presiding Examiner: Mr. Barnett, you say you think. I think it is important in this matter that you state what your recollection is, if you recall it, and do not guess at any answers. If you know the answer, give it. If you do not, I think you should say you do not, and I do not think it is advisable for the witness to attempt to reconstruct something that he does not actually remember.

I think he should answer every question that he can remember. Every question you remember, you answer, as accurately as you can, but do not guess at any answers.

By Mr. Dougherty.

Q. Is the answer you have made, Mr. Barnett, to my last question, correct, to the best of your recollection and belief?

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A. I am not sure so I cannot say.

Q. With respect to any of those fields, do you have any recollection of whether the statement you made with respect to the Monroe Field would be also true? A. No, sir; I do not.

Q. I see.

Now, then, on——

Mr. DaPra: One moment, before you go on.

I would like to tie this thing in. This letter that you read from, Mr. Dougherty, does that have a gas purchase contract number on it?

Mr. Dougherty: That letter is found in a number of places, Mr. DaPra, in the exhibits, but it does not on its face have it. I think you are probably thinking of the fact that we appended it to contract 2173, the Floyd Field, which is the one I read. But there is no number on that. It is simply a separate letter that was included in the compilation of contracts.

Mr. Da Pra: And this letter, as I understand it, Mr. Dougherty, is the same one which has been marked Exhibit 111, for identification?

Mr. Dougherty: Oh, yes, that is right, and, if you recall, Mr. Barnett did say that that was the only one that had changed the contracts, that is the Monroe contracts, particularly, and the Floyd.

By Mr. Dougherty.

**1274**

Q. Now, Mr. Barnett, with respect to the changes in the other fields——

Mr. Fletcher: Mr. Examiner, may I ask the witness a couple of questions?

Presiding Examiner: Are they of a clarifying nature?

Mr. Fletcher: I think they are. If they are not, you stop me.

Presiding Examiner: All right.

Mr. Fletcher: Mr. Barnett, the subpoena directed for 1950 forward, did it not?

The Witness: Yes, sir.

Mr. Fletcher: Did you make any preparation behind 1950 to review the matter, particularly review this particular letter?

The Witness: No, sir; I made preparation to present the 1950 price as we had it at that time, and then bring it forward.

Mr. Fletcher: Was that the basis of your answer just preceding the colloquy that you had with the Examiner?

The Witness: Yes, sir.

Mr. Fletcher: That is what I wanted to show, Mr. Examiner.

Presiding Examiner: Very well.

Mr. Fletcher: You see, this letter, Mr. Examiner, if I may, as long as I have interrupted, was dated July 18, 1947,



and was in effect in 1950.

Presiding Examiner: Yes, sir.

Mr. Fletcher: It had been in effect.

Presiding Examiner: Well, what I had in mind in raising the question at all was this: There are in Exhibits 100 to 110 a great many documents. I assume that the witness is going to try to answer any question which has been put to him as fully and completely as he can.

At the same time, I am cognizant of the large volume and the possibility that a witness in these circumstances could not recall every fact with regard to every instrument, and I want this record to be reflective of facts and not conjectures on the part of the witness, and that is why I raise the question.

By Mr. Dougherty:

Q. Now, with respect to contracts in the Bethany Field, Mr. Barnett, and I am referring to Exhibit 104, and contract 1116, and among the documents constituting that is this amendment to gas purchase contracts made February 15, 1949, and which has in the upper righthand corner the numbers, 1041, 1083, 1085, 1113, 1114, 1116, 1132, 1137, 1151, and 1158.

Presiding Examiner: Mr. Dougherty, I hate to interrupt you, but could you tell me what exhibit number that was for identification so I can follow this?

Mr. Dougherty: 117. I will do that in each instance,

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then, Mr. Examiner.

Presiding Examiner: Well, I would appreciate it. It would help me.

Mr. Dougherty: Yes, I should do that. I apologize for not.

Presiding Examiner: I know you are doing everything you can.

By Mr. Dougherty:

Q. Mr. Barnett, you are familiar with that amending contract, I believe, because we had some considerable discussion about it, you remember? A. Yes, sir.

Q. Now, do you by any chance recall in respect of this amendment which amended those various contracts numbered on the first sheet, whether the change of price that was reflected in that amendment was first negotiated with non-affiliated producers or was that first negotiated with Union? A. You are again carrying me back behind 1950.

Q. I am not critical about it, I just want to get it on the record. That is all.

You do not know? A. No.

Q. Now, in the same contract, the same exhibit, the February 13, 1951, agreement, that being subsequent to 1950, the price changes there you will see started in a price schedule

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of 7 cents running on by step-ups to finally reaching 11¾ cents.

Were those price changes negotiated first with the non-

affiliated producers, or with Union? A. They were first negotiated with the non-affiliated producers in the field, and then offered to all other non-affiliated producers, and to Union Producing Company.

Q. I gather from your answer—you say they were then offered to other non-affiliated producers, and then to Union. Which of the non-affiliated producers did you first negotiate them with, as you remember? A. We have several producers in the Bethany field besides Union Producing Company. We negotiated a contract or renegotiated a contract with Mr. Hansbro, who had a very major source of supply in the Bethany field. Thereafter, being fair to all of the other producers in the field, including the Union Producing Company, we extended that same offer to them. After Hansbro had signed it, Union signed it, and the other producers signed it also.

Q. Now, with respect to other amendments which you have refreshed your recollection on before coming here, which your counsel stated was 1950 and subsequent, could you state what the practice was with respect to negotiating those prices, that is as to which group, affiliated or non-affiliated producers were first negotiated with?



A. Well our practice, of course, is to be fair to all of the producers in a particular field in the same equitable manner, including Union Producing Company. In most of the fields, and most of the contracts under which we are operating today, we first negotiated with a non-affiliated producer, thereafter with other non-affiliated producers, and with Union Producing Company.

Q. Now, in any instance where you have, say, arrived at an agreement with a major non-affiliated producer, and then subsequently have offered that same price change to other non-affiliated producers, have any of those second groups of non-affiliated producers refused to go along? A. In very

few cases they did refuse, but in the majority of the cases they welcomed it and accepted it. In one or two cases the producer preferred to stay on his old contract, which had a smaller price, and in that case he continued on his old contract while all of the other producers that had accepted the new contract got their price raised.

Q. Now, was there any instance in which Union Producing refused to go along or refused to accept this proposal of increased price? A. None that I know of.

Q. Now, Mr. Barnett, I am showing you Exhibit 102 under the Rodessa Field. This contract No. 2643, there is contained within that contract 264e, the document—this is dated here

**1279**

April 10, 1952. Are you familiar with that contract? A. Yes, sir.

Q. Now, did that contract more or less—I will use the term supplant all of the previous contracts in the Rodessa Field with Union? A. Yes, sir.

Q. And in that instance what is the fact with respect to negotiations that resulted in that increased price being first with non-affiliated or first with Union? A. In this particular case we do not buy any major quantities of gas from anyone else but Union, in one or two minor instances. In this case we thought it only fair to raise Union's price to a level that was established clear back in 1948 when Texas Eastern came into northern Louisiana, and being fair to Union Producing Company was increased their price, worked out a new contract starting at the price shown in here.

Q. Now, you mention that there are very few contracts with non-affiliates in the Rodessa Field. Is that also true in the Monroe Field? A. Yes, sir.

Q. And in what other fields in these various districts would that also be true? Do you want me to review them?

(1279)

A. No, sir. Lisbon, Sligo, Lake Bistineau, Augua Dulce, North Government Wells.

1280

Q. Now, what of the field are there that United buys a small proportion of gas from Union as compared with that purchased from non-affiliated producers? A. I do not believe I can pick those out here.

Q. All right.

Mr. Dougherty: All right, that is all the examination of Mr. Barnett.

Presiding Examiner: You have concluded your examination?

Mr. Dougherty: Well, on the direct.

Presiding Examiner: Does this conclude your direct examination?

Mr. Dougherty: Yes.

I am not sure his being called from the other party, whether it is direct or not, but what I had in mind was Mr. Fletcher and the Staff ask questions, I might ask permission to ask questions then.

Presiding Examiner: Well, I think you should conclude your direct of this witness, and if Mr. Fletcher and the staff examine the witness I rather think that perhaps you ought not to go into some new matter.

Mr. Dougherty: Oh, no. You are absolutely right, Mr. Examiner. I meant only clarifying things, or asking things that are brought out by them.

Presiding Examiner: Oh, yes, of course.

Mr. Dougherty: This is the principal testimony that we

1281

want from Mr. Barnett.

Presiding Examiner: Very well.

Cross-Examination

By Mr. Fletcher:

Q. Now, Mr. Barnett, you were asked, and the question was specifically directed to the Bethany Field, about whether United first negotiated with a non-affiliated producer from whom it bought, and thereafter negotiated with Union.

Now, with respect to that, but not limiting it to Bethany, I want now to refer to all of the gas purchase contracts in the fields from which United buys from Union as contained in Exhibits 100 to 110, both inclusive, what is the policy of United with respect to the amendments to gas purchase contracts covering prices or advance of prices, generally? What is the policy of United? A. United has long followed the policy of being fair and equitable to all producers in the same field. When United works out a new contract a higher prices or having different provisions with a producer in a certain field, then United offers the same provisions of that contract to any other producers in this field, including Union Producing Company.

Q. Now, with respect to that policy, what is the situation in the application of that policy where United has gas purchase contracts, and then third parties come in to a particular area and begin the purchase of gas at increased prices, so that



the going price is then above the contract price of United. Does that situation ever influence the exercise of the policy you have just described? A. Yes, sir.

Q. Can you give us some instances of that that are covered by the contracts or amendments to contracts made with Union Producing Company since January 1, 1950, as typified in the instruments contained in Exhibits 100 to 110, both inclusive? A. Do you mean give you the fields?

(1282)

Q. Yes, some instances, so that we have some concrete illustration of the application of the policy as you have just described it? A. Well, the Lisbon Field is a prime example where the competitive situation was quite a bit higher than the price that we paid, or were paying, and we tried in all fairness to raise our price, which we did, to meet that competitive situation.

Presiding Examiner: Let me ask you, Mr. Barnett, does this policy apply where you had firm contracts having a specific expiration date?

The Witness: In some cases it does because we are always amending and extending and changing our contractual situation.

Presiding Examiner: In other words, even where perhaps if a lawsuit were instituted you would have the right to limit the price you paid to the lower price, United felt as a matter

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of business judgment it should increase the price to the going price in that particular field?

The Witness: In that particular case, yes.

Presiding Examiner: You felt that was good business because it was fair and equitable?

The Witness: Yes, sir.

Presiding Examiner: And your relations with the producers were thereby to the benefit of United?

The Witness: Yes, sir.

By Mr. Fletcher:

Q. Now, Mr. Barnett, if you have a contract that has a short term to run, is the application of that policy made in the same way as it would be where you have a contract for a longer period? A. Yes, sir.

Q. Why? A. To bring that price in line, and to maybe extend the term.

Q. Does that policy have any connection with the continuing effort of United to maintain and renew and extend gas purchase contracts, and thus insure a continuous supply? A. By all means. We are always looking for new sources of supply, so we can improve our position in a field, and continually renegotiating our contracts to so improve our position.

1284

Q. Now, then, let me ask you this question on that: Take the "X" field, and say you have a contract with Joe Doakes, and that contract calls for a price that because of competitive advances, is, in your judgment, either low or abnormally low, and Joe Doakes' contract has a short period to run, would that trigger, so to speak, the initiation of this policy with respect to Joe Doakes? A. Yes, sir.

Q. How would you handle that, with a direct negotiation with Joe Doakes? A. Yes, sir.

Q. Then would you negotiate similarly or seek to with other producers from whom you bought in that "X" field? A. Yes, sir.

Q. Including Union Producing Company, if it was in X field? A. Including Union Producing Company.

Q. In any of those instances do you pay Union Producing Company more than these other amendments to Joe Doakes and these other producers? A. No, sir.

Q. Now, Mr. Barnett, I was trying to get that clarified as to contracts that had short terms.

Now, let us get the same situation and the practical application of that policy with respect to contracts that still

1285

have several years to run on their term, or a long time to run, either one. How is that policy then applied? A. It is applied in the same manner.

Q. And what is the persuasive point of the application there? Is it the same? A. Yes, sir.

Q. Mr. Barnett, under the practical workings of that policy, do you lose many contracts, that is lose them in the sense that you are unable to renew them, or are you able to renew the vast majority of them? A. We are able to renew the vast majority of them.

Q. Now, Mr. Barnett, Mr. Dougherty asked you about whether any of the non-affiliated producers ever declined, and you said sometimes some of them had. Now, what was the situation, if you recall, that produced the refusal or why was the refusal had? A. Well, the refusal was usually because the producer felt like he would like to continue on his contract without extending the term, and thereby have a short term contract.

Q. That leads me to ask this question: In the practical application of that policy, you have been testifying to, do you always get an extension of the term, or seek an extension of the term? A. Yes, sir.



Q. Do you always get it, or not? A. Not necessarily.

Q. These cases that you have talked about are where some of those producers have short terms remaining in their contracts and they prefer to go ahead at the lower price for the balance of the contract, and then renegotiate a new contract rather than extend it for the increase at that time? A. That is right.

Q. Mr. Barnett, in the application of this policy that we have been talking about, does Union have any prices that others—that is, the type called by Mr. Dougherty non-affiliated, do not have or that would not be made available to others? A. No, sir.

Q. Now, when these renegotiations that you have described are conducted, do they ever extend beyond the area

of a field, and just cover an area in general that may include several fields? A. It could; yes, sir.

Q. But do they? Do you recall any instance where it does?

Let me ask this: How about Waskom-Bethany? A. It does in Waskom-Bethany, and in Joaquin Logansport.

It could in McFaddins.

Q. In other words, they are separate areas, and though



they may be several fields, do you treat them as an area? Is that the application of that policy? A. Yes, sir.

Q. Now, Mr. Barnett, in the light of the issues posed by the subpoena duces tecum here, have you made any investigation to determine comparatively the prices paid by United to non-affiliated as compared with prices paid to Union, and then to compare those prices paid by others in the same fields or areas? A. In the same areas.

Mr. DaPra: Is the answer that you have?

The Witness: Yes, sir.

By Mr. Fletcher:

Q. Have you got a chart that shows that? A. Yes.

Presiding Examiner: Off the record.

(There was a discussion off the record.)

Presiding Examiner: Back on the record.

Mr. Fletcher: May we have an identification number, Mr. Examiner?

Presiding Examiner: Yes, I think you might describe this chart first, and then we will give it an identification number.

Mr. Fletcher: This is a two-sheet exhibit, Mr. Examiner. The first sheet is a chart which is marked "Chart B, Weighted Average Price Paid to Producers for Gas By Major Pipe Line

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Companies, Data From F.P.C. Annual Report."

It is a graph which runs from the year 1948 to the end of the year 1953, and the second page is headed "Weighted Average Prices Paid to Producers for Gas Purchased by Major Pipe Line Companies, Information from F.P.C. Annual Report, Includes 745.11 Field Purchases, 745.12 Gasoline Plant Outlet Purchases, All Volume on an Equivalent Pressure Base of 14.9 PSIA."

Presiding Examiner: Very well, you wish to have this exhibit marked for identification?

Mr. Fletcher: Yes.

Presiding Examiner: Very well, it will be marked Exhibit 161, for identification.

(The two-page chart headed "Chart B, Weighted Average Price Paid to Producers for Gas by Major Pipe Line Companies," was marked United Gas Pipe Line Company Exhibit No. 161, for identification.)

By Mr. Fletcher:

Q. Now, Mr. Barnett, was Exhibit 161, for identification, prepared by you or under your supervision? A. Yes, sir.

Q. Now, will you describe, please, sir, first, the source of your information, and what the exhibit is designed to show? A. Well, first the exhibit is designed to show the price paid by major pipe line companies in the area in which we buy

1289

our gas, which is, of course, in the Gulf Coast area. It was prepared from the Annual Report of each respective pipe line company; and we have included to account 745.11, 745.12, gasoline plant outlet purchases, which gives us in effect a price paid in the field.

This does not include any interconnection between pipe

line companies, but this gives a price in the field which these producers paid as taken from their annual reports.

Q. Now, then, the information that is extended on the second page is graphically represented by the chart on the first page? A. Yes, sir.

Q. Will you please explain what that shows, referring to the chart on the first page? A. That shows that beginning in 1948 United's price to Union was only slightly higher than the price of Arkansas Louisiana Gas Company, and was less than the price paid United Gas Pipe Line Company to non-affiliated and less than the price paid by Tennessee, by Southern Natural, and by Texas Eastern.

In 1949, the same condition existed. United's price to Union was about the same as the Arkansas Louisiana Gas Company price, less than the price United paid to non-affiliated companies, was less than the price Tennessee Gas Transmission Company paid, was less than the price of Southern Natural Gas Company, was less than the price of Texas Eastern Transmission



Corporation, was less than the price of Texas Gas Transmission Corporation.

In 1950 and in 1951, in 1952, and in 1953, the chart shows that the price United paid to Union Producing Company was less than any other price paid by a pipe line company including United's price to non-affiliated companies.

In 1950, 1951, and 1952 the high price was paid by Mississippi River Fuel Corporation, and in 1953 Texas Eastern paid the highest price closely followed by Mississippi River Fuel Corporation.

Q. Now, Mr. Barnett, according to the graph on Exhibit 161, for identification, I believe 1951 is the first year where everybody is represented on the graph; is that correct? A. 1951.

(1290)

Q. Everyone is shown on the graph? A. Yes, that is when Texas Illinois and Trunk Line started.

Q. Now, what is the spread between what United paid Union beginning in 1951 and the highest price paid in 1951 which is that of Mississippi River Fuel Corporation, as shown on the graph? A. In 1951 United's price to Union averaged 5.11 cents. Mississippi River Fuel's price averaged 11.07.

Q. All right, sir. A. In 1952 United's price to Union averaged 6.40, to

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Mississippi River Fuel Corporation's price of 11.30.

In 1953 United's price to Union averaged 6.76 as compared to Mississippi River Fuel Corporation's price averaging 11.96.

Mr. Fletcher: Mr. Examiner, we offer Exhibit 161 in evidence.

Presiding Examiner: Is there any objection to the receipt of this exhibit in evidence?

Mr. Dougherty: The only question that arises in our mind, Mr. Examiner, is whether or not by use of this material counsel is attempting to bring some theory of the fair field price into this case, which has not been here at all.

For the purposes of illustrating what the various prices are, I see no objection to it, but if it is in any way to be used as a basis for introducing that theory of value for gas produced by Union involved in this case, then we would object to it.

Presiding Examiner: What would be the grounds of objecting to it for that reason?

Mr. Dougherty: Because it is a departure from any of the matters heretofore put in. I did not inquire of the witness about it. It is wholly beyond the scope of the direct examination. As a matter of fact, that is sufficient reason to object to any of this testimony because it is not cross-

examination, it is putting in a part of the direct case, and long ago Mr. Fletcher said United's direct case was closed.

1292

Presiding Examiner: If I recall correctly, Mr. Epperson testified as to certain contracts. Now, in that connection certain exhibits were introduced. Those exhibits, if I recall correctly, showed the price which United paid to non-affiliated producers, and showed the price which United paid to Union.

I think it is contended, at least by the Staff, that those exhibits introduced by Epperson had some relation to the reasonableness of the price of gas which was claimed by United in its cost of service.

Now, I do not know whether the Staff intended or United intended to give any characterization to the evidence which was produced by Mr. Epperson. I do not think it is necessary to characterize it by giving it a label like fair field price of gas, but I do think that there was at least some intimation that the fair field price of gas was in this case at that time.

Mr. Dougherty: With deference, we take strenuous opposition to that observation of the Examiner, because Mr. Epperson said he took these prices from the contracts, and he never made any statement that he took into consideration value, which is what you are talking about when you go into fair field price.

Presiding Examiner: I understand that, but Mr. Epperson testified to those, and the Staff claimed that those were the prices United was entitled to have credited to its cost of service.

1293

Now, certainly some rationale was involved in that contention. I am not ruling that that was correct. I am just

making an observation as to what my recollection is as to the testimony in the case.

Mr. Dougherty: Well, there was no language used by the witness which specifically said that.

Presiding Examiner: That is right. I think that your recollection of that is correct.

Mr. Dougherty: We merely object, as I have said.

Presiding Examiner: Now, the Staff.

Mr. DaPra: I wish to make this point of clarification. The exhibits which came in showing the prices which United paid to non-affiliated producers, and the prices paid to Union Producing, were offered in this case by Mississippi River Fuel Corporation and Staff had Mr. Epperson available for examination and cross-examination by Mississippi.

Now, as far as the purchase gas costs which Staff allowed United, and which Staff's witness testified was a reasonable allowance for a gas purchase cost for United, whether they bought from Union Producing or from the non-affiliated producers, are shown in our Exhibit 77, and that is our contention in this case as to the reasonable allowance for purchased gas cost for United.

As I take Mississippi's contention here, it should be a lesser cost.

Presiding Examiner: Exhibit 161 will be received in evi-



dence.

(The document heretofore marked United Gas Pipe Line Co. Exhibit No. 161 was received in evidence.)

Mr. Fletcher: Mr. Examiner, I have one more question, if you let me, please, sir.

Presiding Examiner: Yes.

By Mr. Fletcher:

Q. Mr. Barnett, will you please refer to the green line on Exhibit 161, which is marked "United Gas to Affiliated,"

and the dark blue line, which is marked "United Gas to Non-Affiliated," and beginning in 1948 and then going to 1949, 1950, 1951, 1952, and 1953, will you please read off of that what the price, as shown on that graph is, by United to non-affilated and to affiliated or Union? A. In 1948 United's price to Union Producing Company was 3.55; United's price to non-affiliated producers was 3.72.

In 1949, United's price to Union was 3.75. United's price to non-affiliated producers was 4.50.

In 1950, United's price to Union Producing Company was 4.21 while United's price to non-affiliated producers was 5.31.

In 1951 United's price to Union Producing Company was 5.11. United's price to non-affilated producers was 6.12.

In 1952, United's price to Union Producing Company was 6.40. United's price to non-affiliated producers was 7.69.

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In 1953, United's price to Union Producing Company was 6.76. United's price to non-affiliated producers was 8.40.

Mr. Fletcher: That is all, Mr. Examiner.

Presiding Examiner: On this graph on Exhibit 161, where it says United Gas to affiliated, the green line, affiliated means Union Producing Company, does it not?

The Witness: Yes, sir.

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1300

Proceedings

Presiding Examiner: The hearing in the matter of United Gas Pipe Line Company, Docket No. G-1142 et al., will please come to order.

The witness will resume the witness chair.

(1300)

Whereupon,

**Charles C. Barnett**

resumed the witness stand, and was examined and testified as follows:

Presiding Examiner: Toward the close of yesterday's session I asked the staff whether they had any questions to put to Mr. Barnett, the witness.

Is the staff ready to proceed now?

Mr. DaPra: We are, Your Honor.

Presiding Examiner: Very well.

Cross-Examination

By Mr. DaPra:

Q. Mr. Barnett, is it possible by an examination of Exhibits 100 to 110, inclusive, to determine what prices were being paid by United to Union as of December 31, 1953, in the districts and fields covered by those exhibits? A. Yes, sir.

Q. And that examination would indicate, would it not, what contracts were current as of that date? A. Yes, sir.

**1301**

Q. And I take it from your answer that you have given to my question that it is possible by such examination to determine which of those contracts or amendments contained in Exhibits 100 to 110, inclusive, have been supplanted? A. Yes, sir; to date.

Q. Thank you, Mr. Barnett.

Now, I notice that in some of the fields that you have numerous contracts, we will say, with Union Producing Company. Is it the policy of United to reduce those numerous contracts to one? A. We are endeavoring to do that; yes, sir.

Q. So it may be that an examination of Exhibits 100 to 110, inclusive, will show one contract being current which

supplants a number of contracts? A. That were in effect in 1950.

Q. Now, as I recall your testimony of yesterday, you testified with respect to situations where United purchased gas from Union and other producers, non-affilated producers, in a particular field, after a pattern set by a third party coming into a particular field, and I think you mentioned the Lisbon Field. A. Yes, sir.

Q. Are there any other fields other than the Lisbon Field, Mr. Barnett, where that situation obtained? Do you recall any?

1302

A. Yes, sir.

Q. Can you state the fields included, sir? A. I would say Lisbon, Lake Bistineau, Rodessa, Sligo, Agua Dulce, and North Government Wells.

Q. Does that complete your answer, Mr. Barnett? A. Yes, sir.

Q. Now, also, yesterday, in discussing the policies of United in negotiating contracts with non-affiliated producers, as well as Union Producing Company, that you had situations where a non-affiliated producer would refuse an offer of an increase in price for consideration of an extension of term. Do you recall that testimony? A. Yes, sir.

Q. Now, in any case where it is shown that United pays a non-affiliated producer less than it pays Union in a particular field, is that a result of the refusal of the non-affiliated producers by reasons best known to themselves of not accepting the offer of United to increase the rate? A. That would be true in all cases except in the Monroe Field, where we have one producer that is receiving less than Union, and about six that are receiving the same.

Q. Well, from your observation of the purchase of gas

(1302)

from producers, Mr. Barnett, is the price for gas in any particular field included as to whether the contract is for a temporary purchase of gas or a long-term contract?

1303

A. Perhaps I do not understand what you mean, Mr. DaPra.

Q. Well, let us just assume this state of facts: Say that United, and you are negotiating for United, are interested in purchasing additional supplies of gas in a particular field, and one producer is willing to enter into a contract for a temporary period, or a short period. Another producer is willing to enter into a long-term, say, ten, fifteen, or twenty years, is it your observation that the long-term producer wanted more or less money than the temporary producer? A. He would want more money.

Q. Now, with respect to your Exhibit 161, do the pipe line companies which you show on Exhibit 161 purchase natural gas in fields or in the same area from which United purchased gas from Union and non-affiliated producers? A. They purchase in the same area, and in a great number of cases the same identical field.

Mr. DaPra: That is all we have, Mr. Examiner.

Redirect Examination.

By Mr. Dougherty:

Q. Mr. Barnett, in connection with this so-called policy of United Gas Pipe Line Company with respect to increasing the prices of gas in contracts with non-affiliated producers, as was described by you yesterday in response to a number of questions by Mr. Fletcher, when did that policy first come to

1304

your attention? A. Well, I thought I inherited the policy.

Q. Well, I think you say you got into this gas supply work in 1945? A. Yes, sir.

Q. And who was it told you about the policy, or how did it come to your attention? A. Through checking back on other old contracts and through discussions with various members of United's organization.

Q. Well, was that policy set forth in any written memorandum that was handed to you at the time? A. Well, I am sure it was not.

Q. Who was your superior officer, then, that you reported to? A. Mr. Ed Parks.

Q. And he still is the one that you report to? A. Directly; yes, sir.

Q. And that is the Mr. Ed Parks who has been present in these proceedings, and who is a vice-president of United Gas Pipe Line Company? A. Yes, sir.

Q. Did Mr. Parks explain this policy to you at that time? A. I cannot say that he specifically explained it to me. I think I kind of grew into it, both from discussions with Mr.



Parks and discussions with other people who had been doing the same work as I took over, prior to my coming back out of the service.

Q. Was there at no time any specific instructions in any written memorandum which were handed to you as a guide to policy? A. No, sir; there was no written memorandum.

Q. Well, was that policy subject to changes which you might in your own judgment determine? A. I, of course, did not do anything unless I cleared it with the management.

Q. And by the management, meaning whom? A. Meaning Mr. Parks in particular, or the other management, other officials of United Gas Pipe Line Company.

(1305)

Q. And if what you were proposing or recommending with respect to these prices in the non-affiliated contracts was approved by Mr. Parks, then you went ahead and completed the transaction? A. Yes, sir.

Q. Now, in 1945, as far as the non-affiliated contracts were concerned, were they not generally of a term of, say, around five years? A. Well, I do not believe I could answer that.

Q. Well, you mentioned yesterday one part of this policy that related to situations where you wished to renew or extend

1306

the term beyond the period of time of an existing contract, and that in order to get that extension of term you stated it was necessary to increase the price to these non-affiliated producers, and even increase the price over what was stated in the then existing contract for the remaining period of that then existing contract.

Mr. Fletcher: I object, Mr. Examiner, to the question as asked because as I understand the question it assumes and states facts which I believe are not accurately reflective of what the witness testified to. I understood the report to show that this policy was followed for reasons of fairness and equity and to keep an equalized situation and that there were two additional prongs to it. One was that where they could they sought and got what extensions they could, though that was not the sine quo non of the policy; and, secondly, they also had in mind the question of maintaining relations so they could preserve and keep intact their supply of gas.

I do not think the matter was conditioned as stated in the question, and I think that is not fairly reflective of the evidence, and so for that reason I object to it.

Mr. Dougherty: Well, I had no intention of deviating. I may have gotten the wrong impression myself yesterday.

By Mr. Dougherty:

Q. Well, let me state it this way, Mr. Barnett: There were situations in which you had contracts with non-affiliated

1307

producers that did extend for short periods such as five years? A. Oh, yes.

Q. Then my question was, first, that when you took charge of this work in 1949 were not these contracts with non-affiliated producers in the main for periods of around five years? A. Well, I cannot say that.

Q. Well, you do know that a lot of them were? A. Well, I cannot say that.

Q. Well, do you know that a number were amended to extend beyond five years? A. I can say that.

Q. So in any event we can, by examining Exhibits 100 to 110 make a determination on that? A. Yes, sir.

Mr. Fletcher: Not with non-affiliated, Mr. Dougherty, if that is your purport.

Mr. Dougherty: No, you are right.

Mr. Fletcher: Because Exhibits 100 to 110 only cover Union contracts in response to your subpoena, and if there be any others in there it is only because Union was a party to the same contract; it would be incidental.

By Mr. Dougherty:

Q. Well, when you did take charge in 1945 did you not familiarize yourself with the gas supply contracts so that you would know when extensions would have to be entered into and

1308

negotiated? A. Are you talking about non-associated?

Q. Yes. A. Well, of course, I familiarized myself with

all features as best I could of the entire contractual structure of United Gas Pipe Line Company.

Q. Well, you are unable to tell me now whether in the main, the majority of contracts that United had with non-affiliated contracts, as they were in 1945, did extend for short term periods such as five years? A. No, sir; because we had such a large number of contracts that I do not think I could say how many were this and how many were that.

Q. Well, could you search your recollection to know whether in 1945 United Gas Pipe Line's contracts with non-affiliated companies were in the main as long as 20 years? A. No, sir; I do not know.

Q. You do not know anything about that? You do not recall it? A. No, sir; I do not recall it.

Q. Now, did you then in carrying out this policy increase prices in contracts which still had some period of time to run without obtaining extensions of time on the contracts? A. Oh, yes.

Q. And did that policy result in your increasing prices



in existing contracts that had further periods to run, stated prices?

You actually did that without having to extend the contract? A. In some cases we did, yes.

Q. Well, now, in those cases was that because of additional pipe line companies coming into the area, or what would cause you to increase a price in an existing contract which still had a period of time to run in the absence of obtaining a further extension of the time of that contract? A. Well, basically, we were and are always endeavoring to be fair and reasonable with all of our producers from whom we purchase gas.

Q. Well, you, of course, undoubtedly wanted to be fair and reasonable when the contracts were made? A. Yes, sir.

Q. Well, what was it made you feel it was necessary to raise a price in order to be fair without obtaining any extension of time? A. We felt that it was good judgment and good business to do it in the particular cases where we did.

Q. Well, now, can you give us some of these fields where that was done, and I am differentiating between the situation where you discussed the raising of prices caused by competitive pipe lines coming in?

1310

A. I can give you one that I was thinking about in the Saxet White Point Field.

Mr. DaPra: What district is that?

The Witness: That is located in the——

Mr. DaPra: Is that the San Antonio district?

The Witness: It is in the Houston district. We have a contract with Republic Natural Gas Company. I believe that was made back in 1930, some time ago.

It provided for a fair price at that time. In some time I believe after 1950, when we were paying higher prices in that area, other pipe line companies had come into that area, Republic came to us and wanted to know if it was something that could be worked out to relieve the situation, and we at that time were paying a higher price to other producers in that same area, so we told Republic that under this situation we would increase their price about a cent, or a cent and a half.

By Mr. Dougherty:

Q. And that was in order to bring Republic up to prices you were already paying other producers? A. Would pay other producers.

Q. And actually were paying? A. We were in some cases paying that price.

(1310)

Q. Well, what I would like to know, if you can give us any information, is a situation where there was no other pipe line coming into the field to cause a competitive situation, but

1311

merely for some reason which you say was in your judgment you decided to increase the price to the non-affiliated companies without requiring any extension of time? A. Mr. Dougherty, let me say this: The area in which we are purchasing gas, is criss-crossed and recrossed with pipe line companies, and there is no field in that area that cannot be reached by any number of pipe line companies.

Q. That was not true in 1945, though, when you started? A. In 1945 I think they were just beginning to come in, Tennessee, as I recall, being the first major pipe line company after the war. It was just beginning to grow.

Q. That was 1944? A. Well, I was thinking around 1945.

Q. But these others, for example, on your Exhibit 161, Arkansas Louisiana was paying for gas in the territory in northern Louisiana where United Gas Pipe Line Company was buying; isn't that so? A. Yes, sir.

Q. And you remember that in 1949, that is do you recall whether Southern Natural was buying directly from producers, or buying from United Gas Pipe Line Company? A. Well, Southern Natural was buying in 1949.

Q. I said 1945, when you first came. A. I am sorry, I thought you said 1949.

I do not recall whether Southern Natural was in there. I

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am sure they were because they are quite an old pipe line company.

Q. Now, Texas Eastern was not in existence in 1945? A. I do not believe Texas Eastern came into being until 1947 or 1948.

Q. And are you familiar with the old Memphis Natural that was the predecessor of Texas Eastern? A. I know who they are.

Q. And when you came to take charge of this work in 1945 do you have any recollection of whether Memphis Natural was out in any of these fields that you talked about? A. I do not remember about them, Memphis Natural.

Q. Now, Transcontinental came into the picture much later. You show it first here in 1950, the first purchases. A. But I believe they made their contracts around two years prior to the first delivery starting.

Q. Well, that is before they first even came for their certificate they had to make contracts? A. Yes, sir; and make their deals.

Q. Now, do you recall that Mississippi River Fuel Corporation did not start buying gas from any producers in these fields until it is shown here in 1950? A. I do not know when Mississippi started negotiating for the purchase of this gas, but deliveries did start in 1950.

Q. And Texas Illinois, of course, came in much later, as



did Trunk Line also? A. With their initial deliveries, but again they had to start buying gas quite a bit of time before their deliveries started, and before they got their certificate.

Q. Well, you see in my question, Mr. Barnett, I was trying to start when you started with the company in 1945, and then bring it down to when you did get these competitive situations. A. Yes, sir; Mr. Dougherty, let me add this: Our competitive situation is also influenced by perhaps some local pipe line companies, and is not altogether limited to interstate pipe line companies, even though they do give us probably what you might call the largest competition.

(1313)

Q. Well, the local companies bought much less gas than United Gas Pipe Line Company in 1945? A. Yes, sir; but they perhaps got into some fields where they were buying gas.

Q. And those would be Arkansas Louisiana, Lone Star Gas, and what others? A. Well, I was thinking specifically about perhaps Houston Pipe Line, Southwest Industrial, operating in the Texas area.

Q. With respect to these districts, that is the Monroe district, Shreveport district, and Dallas district, when you started in 1945 what other local pipe line companies were

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giving you competition then? A. As I recall, and probably Southern Natural, I am sure, were buying gas at that time.

Q. But the real competition which caused the sharp increase in prices of gas in the areas in which United Gas prices resulted from the establishment of these long-distance pipe lines commencing with Tennessee [illegible]s in 1944, and continuing on up? A. Yes.

Q. And that is illustrated by your Exhibit 161, isn't it? A. Yes, sir.

Q. So that prior to the time when those companies started is it not correct to say that the competition that resulted, and which did result in sharp increases in price, was not present? A. Oh, I cannot say that.

Q. You think it was present just as much? A. I think it was present.

Q. Even in 1945? A. I think it has been present for a large number of years, even back before 1945.

Q. And was just as sharp and difficult in 1945 as it was in 1951? A. No, sir; it is getting brisker all of the time.

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Q. And that is because there are more buyers for the gas that is available? A. For the gas that is available, and it is coming out of the area in which we are located.

Q. And that is what I was asking you. As of 1945 when you started United did not have the competition in the buying of gas throughout these particular Monroe, Shreveport, and Dallas districts that did develop later? A. It was not possibly the same degree, but it had competition.

Q. The same kind, but it was not to the same extent, you will agree with that? A. It was not to the same extent, but it was there.

Q. So that your average price of gas paid by United Gas to the non-affiliates which you first show in 1948 as being 3.72 cents, was the price based on the contracts made before you started this effective policy of increasing, was it not? A. Would you say that again? I did not follow that.

Q. Well, I will state it another way: You note on tabulation B of your Exhibit 16?, for the year 1951, the weighted average price paid by United to non-affiliated producers was 3.72 cents? A. Yes, sir.

Q. And that is the lowest weighted average price so paid by United to non-affiliated producers shown on this tabulation,

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is it not? A. Yes, sir.

Q. Now, does not that indicate, and is it not your recollection that this policy of increasing prices had not yet been effective to any substantial degree? A. Well, I do not think I can say that. I think it was always effective.

Q. Well, isn't it a fact, Mr. Barnett, that all of your original basic contracts were around 3 to 4 cents? A. Back in that period of time, perhaps prior to 1945, and some of them may have been a little higher.

Q. I mean when you came in 1945, wasn't the price that United paid to the greater number under its non-affiliated contracts around 3 and 3½ cents? A. Well, it possibly was around that. In some cases it may have been higher.

Q. Of course, to get a weighted average of 3.72 cents you would have to have something lower and something higher than that? A. That is right.

Q. And most of the prices actually stated in those early contracts were on a pressure base of two pounds above 14.7 pounds, were they not? A. Well, at that time I think probably all contracts were stated on that base, and it is only in recent years that



the bases have started to be changed.

Q. And these prices stated in your tabulation B, Exhibit 161, were on a 14.9 pounds base? A. Yes, everything here is on 14.9 pounds for convenience and, of course, most of the annual reports are on the basis of 14.9 pounds.

Q. Now, when you came in 1945 did you learn of a time when Union Producing Company was first organized and took over the producing properties that they did acquire, when you first started business? A. No, sir, I was not familiar with that.

Q. Are you familiar with the fact that there was a time when the producing properties acquired by Union Producing were owned by the predecessor of United Gas Pipe Line Company? A. Well, I do not believe that I can answer that.

Q. Are you familiar with the example in the Monroe field, these first contracts with Union Producing and United were made in 1937? A. I know we had some made in 1937.

Q. Well, are you familiar with the fact that before 1937 United Gas Pipe Line Company, and one of its predecessor companies, owned production in the Monroe Field? A. No, sir; I was not.

Mr. Fletcher: If the Examiner please, I object. I do not object to his asking the question, but I object to the statement

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of it as a fact. There is no such evidence as that in this record.

Now, if he wants to ask the witness is it a fact, I have no objection to that, but when he states that it is a fact then I do object because there is nothing in the record on that, and I do not want the record to indicate that I agree with the statement of fact.

But if he wants to ask the winess is it a fact that so and so is the case, I have no objection whatever to it.

I therefore move to strike that question and answer.

Mr. Dougherty: I will amend my questions to take in your suggestion, Mr. Fletcher.

By Mr. Dougherty:

Q. Now, with respect to the date of this policy which you said was to increase your prices to your non-affiliates to meet higher prices resulting from these competitive pipe lines, that is because of others coming into the area—you do recall that? A. Yes.

Q. And I am correct, am I not, in my recollection that there were certain situations where other pipe lines had come in and had paid higher prices than United was paying, and then United would increase its price to its non-affiliates? A. Well, recognize at the same time that we were buying additional gas all alone, and they were not just going back and

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changing these contracts, but we were adding new contracts on new sources of supply all along. It was all being carried forward together, and it is not an isolated case of just going back over the contracts in effect.

(1319)

We are making new contracts, and that may affect the field where we have our sources of supply.

Q. I realize that, but I thought you used the Lisbon Field as a specific example of raising prices to meet other competitive pipe lines. A. I did.

Q. And I cannot ask you all of the things in one question. I am trying to limit it to specific situations which you describe in your answers to Mr. Fletcher.

Now, you did mention the Lisbon Field particularly yesterday? A. I mentioned Lisbon. That was one that I mentioned, yes, sir.

Q. Now, what were the competitive conditions that you had in mind when you gave your answer about the Lisbon Field? A. Simply this: Texas Eastern at that time, or a little bit before that time, had come into all of North Louisiana and were making contracts in several fields, including Lisbon, at a starting price in 1948 of 7½ cents at 16.7 for gas delivered at a common point. We felt in 1950 or 1951 that that was a fair and reasonable price, and we therefore took that price and used

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it in the Lisbon, Lake Bistineau, Rodessa, and Sligo fields, with the difference that we were purchasing gas at the well head, and in effect to compensate for the difference between the central point 7½-cent price, and our price that we established of 6½ cents, there was a penny differential to in effect compensate for the different delivery conditions.

Q. Now, in such contracts as you had with non-affiliates in those particular fields, did you get extensions of time when you raised the prices to meet the Texas Eastern competition?

Mr. Fletcher: I am sorry, I was sneezing and did not hear that question.

Presiding Examiner: All right, would the reporter please read the question back?

(The question was read.)

By Mr. Dougherty:

Q. An extension of the period of the contract, is what I meant. A. In most cases, I think we did.

Q. Now, with respect to those particular fields, would you name them again so I will have them in mind when you mention Texas Eastern? A. It was Lisbon, Lake Bistineau, Rodessa, and Sligo.

Q. Now, yesterday in response to one of my questions, I asked you as to the relative amounts of gas which United Gas purchases from non-affiliates, and from Union Producing Company



in a number of fields, my recollection is certainly with respect to Rodessa you said that was mainly gas purchased from Union.

But would you tell us now with respect to those four fields you mentioned to what extent you do have contracts with non-affiliated producers in those fields? A. We have contracts with non-affiliated producers in all of those fields.

Q. Now, in Rodessa, what is the relative proportion you have, that is as to quantity of gas which you purchase in Rodessa? Do you know whether that comes a greater amount from Union or from non-affiliates? A. Well, I think it is greater, but I do not know to what degree.

Mr. DaPra: Greater by what?

Presiding Examiner: Greater as to whom?

The Witness: Union Producing Company.

Mr. Fletcher: You mean you buy more gas, you think, from Union than non-affiliated, but you do not know how much?

The Witness: That is right.

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By Mr. Dougherty:

Q. Well, is that true with respect to the other three fields that you mentioned? A. Yes, sir.

Q. Now, Sligo Field, has that been in existence for some

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time, to your knowledge? A. What has been in existence?

Q. The Sligo Field. A. Yes, sir.

Q. And has Union Producing Company been producing gas in that field for a number of years? A. As far as I know; yes, sir.

Q. Well, when you went with them in 1945, for example? A. Yes, sir.

Q. Do you have any knowledge as to the proportion of gas from Sligo that is purchased from Union? A. No, sir.

Q. Now, when you raised your prices in those four fields with the non-affiliates, did you then thereafter raise the prices to Union to the same extent in those four fields? A. You will have to read that back.

Presiding Examiner: The reporter will read the question.

(The question was read.)

By Mr. Dougherty:

Q. In other words, did you give Union the same price scale as you gave the non-affiliates? A. When we got through they were all receiving the same price.

Presiding Examiner: Let me hear the last answer of the witness.

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(The answer was read.)

By Mr. Dougherty:

Q. Now, with respect to the Bethany Field, do you recall that you made amending contracts in that field which not only increased the price but extended the term?

Mr. DaPra: Could we have that question read back, please?

(The question was read.)

By Mr. Dougherty:

Q. I am showing you from Exhibit 104, Mr. Barnett, contract 1041, and turning to the amendment that is dated the 15th day of February, 1949, and I will show you also the second section of that contract which amends Section 15. It reads:

"This agreement shall continue and remain in full force and effect for a period of ten years from January 26, 1949, and shall continue in force and effect thereafter for successive periods of one year each provided, however, that either party hereto may terminate this agreement at the end of th original term or any succeeding annual period by giving the other party at least 90 days' prior written notice of the intention of the party giving such notice to terminate this agreement."

That ends the quotation.

You recall our previous questions about that contract yesterday, I think, and the day before?

Presiding Examiner: What is the pending question?

Mr. Dougherty: I just wanted to know if he did remember

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that we had asked him some questions about it.

Presiding Examiner: About that specific contract?

Mr. Dougherty: Yes, as a preliminary.

Presiding Examiner: Could you give me, Mr. Dougherty, if you have it, or if it is available——

Mr. Fletcher: Exhibit 117, Mr. Examiner.

I was trying to catch up and find where he was reading.

Where was that, Mr. Dougherty?

Mr. Dougherty: The 1949 amendment on the second

page, item 2 there which amends item 15 of the previous contract.

By Mr. Dougherty:

Q. Now, I also want to call your attention to the amending agreement made the 13th of February, 1951, in the same contract which in Article 4, on page 7 of that contract, amended Article 15 of the original contracts, as follows: "This agreement shall continue and remain in full force and effect until January, 1972."

Do you have those two items in mind, Mr. Barnett? A. Yes, sir.

Q. Now, if the policy of United is to make changes in these prices to meet competitive conditions, or to meet your company's idea of what is fair from time to time, what is your purpose in making extensions of those contracts for further periods of time? A. They were developed by our new amendments, or new



contracts that we made with non-associated producers in the same field.

Q. If, however, a pipe line in that Bethany Field, that is another pipe line than United Gas Pipe Line Company, would offer to buy gas on a similar period of time basis, say at a schedule of prices one cent over the price schedule contained in the contract that I have just referred to, that is the 1951 amendment, under your announced policy would you not then raise all of the existing contracts, both with non-affiliated and affiliated, to meet such increased schedule? A. No, sir; I do not think we would.

Q. Well, when is it that your policy works and when does it not work? A. Well, it worked in the Lisbon Field under the conditions which I outlined. We felt that the price Texas Eastern had set was a fair and reasonable

price. We think that the price that we have in here today in the Bethany contract is a fair and reasonable price. There may be other prices higher in that same field, but we feel today that this is a fair and reasonable price for this gas.

Q. Now, if three years from now you would determine in the event of higher prices paid by other pipe lines for additional gas, that such higher price would berome reasonable, does your policy contemplate that you would increase these scheduled prices even though the contract goes to 1972?

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A. We have not reached that three-year stage, so I do not know what we would do in three years.

Q. Who determines, then, when your policy shall be used to increase existing contract prices and when it shall not be used to increase existing contract prices? A. The management of United Gas Pipe Line Company.

Q. And your first contact with the management is through Mr. Parks? A. Yes, sir.

Q. I think you answered a question of Mr. DaPra about the price differential that is required for short-term and long-term contracts, and, if I recall correctly, you stated that a long-term contract did require a higher price than a short term. Am I correct in my recollection, sir? A. Yes, sir.

Q. Now, before these long-distance pipe lines came into the field, starting, say; with 1947, 1948, and 1949, do you recall whether your contracts with your non-affiliates were less than 20 years or do you have no recollection of that? A. I have no recollection of it.

Q. Have you testified in certificate cases of United Gas Pipe Line Company before this Commission? A. I have testified in all of their certificate cases since 1947.

Q. I assume, then, that you are familiar with the require-

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ment of the Commission that an adequate gas supply to support the granting of an application for facilities for any increased gas service of any size must be supported by contracts of from 15 to 20 years' duration?

Mr. Fletcher: If the Examiner please, I object to that statement.

In the first place, that is not a correct statement of the Commission's requirement, and in the second place the particular opinions of the Federal Power Commission in the certificate cases of United Gas Pipe Line Company discuss in some detail the question of United Gas Pipe Line Company's gas purchase contracts covering supplies and the wide variation of their terms, and, as I recall it, at this time particularly in the opinion in 1447—I do not recall the number of the opinion—Docket G-1447—but it is mentioned and quoted from in the opinion of the Commission in this very case——

Presiding Examiner: 232, wasn't it?

Mr. DaPra: 10 F.P.C. 35, Your Honor.

Mr. Fletcher: Thank you.

In that particular case it was urged by some of the people who were opposing the certificate that United did not have 15 and 20 years. They had everything from 30 days to in some cases 20 and even longer years, and the proof in that case, as I recall it, particularly by Mr. McGowen, detailed at some length, which I recall, was approved and mentioned by the Commission, the

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history and policy and success of the United Gas Pipe Line Company in connection with the reserves, and the Commission expressly said that United's structure at that time was sufficient and showed an adequate supply, and it was

not predicated upon a requirement of 15 to 20 years, so I object to that question.

Presiding Examiner: Well, Mr. Dougherty, assuming that you were correct in your expression of the Commission's policy, what is the materiality or the relevancy of the question here?

Mr. Dougherty: Only that with respect to these prices that have been paid by Texas Illinois, Trunk Line, Transcontinental, and these other new pipe lines which show a higher price than had been paid by United, that those—my inquiry was going to be whether the witness knew that those contracts which he said—I do not know whether he examined the contracts or just got the prices—whether or not he knew that those were for periods of 15 to 20 years, because he has said that you have to pay a higher price when you get a longer term contract.

Presiding Examiner: Well, assuming that to be so, what still would be the materiality of the question?

Mr. Dougherty: Well, as it relates to the difference between what the prices are shown by United and what those are. That is if you evaluate a price you have to know whether it is a long term or a short-term contract, and that is what I have been trying to develop without much success from this witness.

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He says he does not know what they are except as we find them here.

Mr. Fletcher: In view of that statement, then, I object further, Mr. Examiner. It has no relevancy whatsoever, because the motives or the reasons that impel these other pipe line companies to raise or increase or start purchasing at a higher price are absolutely immaterial.

It is the fact of the price that presents the United Gas Pipe Line Company and confronts it with a situation of a

higher price, and that is the lever unquestionably that increases the price. It is the fact, not the reasons behind the fact, that make the difference.

Presiding Examiner: Suppose all of these companies come in and start bidding against one another, the fact remains that the price goes up. Now, that is not the fault of United.

Mr. Dougherty: Oh, no, I make no suggestion of that, Mr. Examiner, but a price is related to the term of the contract.

Presiding Examiner: Yes, but you are pointing out that perhaps the reasons that motivated other companies to pay higher prices was to get themselves in a position where they could obtain a certificate from the Commission, which I gather is what you have in mind. But assuming that to be so, we have the fact, I think you will concede, that prices in the field for gas have gone up in recent years.

Mr. Dougherty: Oh, yes. But what I was getting at,



since the witness himself had said that the price you had to pay for a long-term contract was greater than for a short-term, I was trying to develop which of United's contracts were short term and then my question was merely to find out whether the witness knew that these higher prices by these others were in contracts of longer term.

Now, if he does not know, that ends it.

Presiding Examiner: All right.

Mr. Dougherty: Do you see what I mean? I certainly agree that United has an adequate gas supply, and I am not trying to do anything except to tie in the price to the term which is an essential question.

Presiding Examiner: You have answered my question. I wanted to find out what is the materiality of relevancy. I do not believe there has been an answer by the witness.

Mr. Fletcher: No, sir; because I objected.

Presiding Examiner: The objection to the question will be sustained.

Mr. Dougherty: All right.

By Mr. Dougherty:

Q. One other question, Mr. Barnett, if you can answer it: Where you have increased these prices to your non-affiliated producers with an extension of the term from five to ten or ten to twenty years, as was shown in the Bethany field, did that increase in price apply to a part of the unexpired term which



in the contract still had to run as well as to the extension of the contract? A. If we made a new contract with another non-associated producer, it would apply.

Q. Well, then, what I am getting at is—let me illustrate: If your contract was for five years, say, from 1949 to 1954, and then in 1951 you extended that for a further period of five years, does your policy contemplate increasing the price for the then remaining years of the originally five-year term as well as fixing a higher price for the new five years? A. Well, in that case our price would be increased in 1951 until 1956.

Q. I see. That is, you would increase it at the time the amendment is made, or the extension is obtained? A. Yes, sir.

Q. Even though that old contract still had some period of years to run? A. Yes, sir.

Q. Mr. Barnett, in preparing the data which you have in Exhibit 161, you took, I assume, all of the fields from which these various pipe line companies were buying gas in these years? A. Well, we took the total annual report of these companies.

Q. And it would be wherever the gas was purchased that

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you included? A. We would include everything that was included on that particular company's annual report.

Q. You made no attempt to limit it to the fields in which United was buying gas? A. No, sir.

Q. And what it is then is simply the total quantity of gas purchased by such pipe line company, divided into the dollars paid? A. Yes, sir.

Mr. Dougherty: That is all. Thank you.

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C. J. Maurer

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Direct Examination.

By Mr. Dougherty:

Q. Mr. Maurer, you have testified previously in this case? A. That is correct.

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Q. Will you then turn to 163 and will you give us an explanation of that exhibit? A. Yes, sir. This exhibit——

Presiding Examiner: When you say "this exhibit," do you mean 163? A. Yes, sir.

I have taken the volumes in m.c.f. from the exhibits—where reflected opposite the exhibit; Monroe is in Exhibit 87, and Shreveport is in Exhibit 88, and the Dallas District appears in 86-A. The volumes were taken from these exhibits, and by

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referring to these contracts which appear in this case, Exhibits 100 to 107, I took the price for a contract which

extended for a period beyond 1954, and from the contracts got the contract price and the pressure base, and converted that price to a 14.9 pound pressure base. That is in column No. 5.

In column 6 then I arrived at the total commodity amount under the provisions in these contracts, and in columns 7 and 8 I picked up from these exhibits I referred to, 87, 88, and 86-A, the amounts which were allowed by the Staff.

In the last column then is the difference between the amounts allowed by the Staff and this calculation based on the contracts. There are two adjustments reflected here. One is in the Sligo field, and the other is in the Bethany Field.

In the Sligo field it is set out in Exhibit 82 that there was a reduction in the volume of gas over that which was set up in Exhibit 88, and the same is true on the Bethany field.

In Exhibit 82 it showed the amount that came from Union Producing ompany, but in the Bethany field it was done on a prorata basis since it did not specify how the reduction was to be made.

Mr. Fletcher: I did not hear that last statement.

Presiding Examiner: Will you read the last statement back, please?

(The record was read.)

The Witness: In other words, there was a prorata basis



between associated and non-associated companies. In other words, on Exhibit 82, page 2, they show that there is a reduction of 2,866,000,000 in the amount from the Bethany field, and I just made that reduction on a prorata basis betwen the associated and non-associated on Exhibit 88.

By Mr. Dougherty:

Q. That is merely in respect of the volume that you have used in column 1? A. Yes, that is correct. And that would be reflected on over into column 8.

Then the dollars are different in column 8 than are shown on the Staff exhibit because of that adjustment in volume which was made on 82.

Presiding Examiner: Actually, then, where you have on Exhibit 163, for identification, the volumes in column 8, they do not correspond to what is shown on Exhibit 87 or on Exhibit 88 that you described because of these adjustments that you have made? A. Yes. Well, the Staff made those adjustments. How this thing came about is United gave the Staff this book and they took this book and made up these exhibits, you remember, 83 through 88.

Presiding Examiner: When you say "this book," what do you mean?

The Witness: It is the book that was the basic data that



United gave the staff.

Presiding Examiner: Does it have an exhibit number?

The Witness: No, sir.

Mr. Dougherty: It is the working papers, Mr. Examiner.

The Witness: Working papers.

Presiding Examiner: I am just trying to follow you.

Mr. DaPra: You certainly could not follow that on the record.

By Mr. Dougherty:

Q. Well, Mr. Maurer, with respect to that volume question, it is only the two items of Siigo opposite which there is a footnote 1, and Bethany opposite which there is a footnote 2 that adjustment in volumes have been made? A. That is right.

Q. And with respect to all of the other volumes contained in column 8, they would correspond to the volumes stated in 87, 88, and 86-A? A. That is right.

Q. If you take the quantity that you have stated for Sligo in column 1, is that figure itself shown in Exhibit 88, or what is the figure shown in Exhibit 88 which you have adjusted? A. Exhibit 88 shows for Sligo under the associated, 34,020,000,000. Then by referring back to Exhibit 82, the Staff shows on that first page an adjustment in the Shreveport



District on page 1 of some 8,749,000, which is detailed on the second page, where they show 5,943,000,000 reduction, which has a footnote which is on the last page of that exhibit, and there they show under footnote 6, under Sligo, they have U.P.C., which I believe stands for Union Producing Company, 5,003,000,000.

I deducted that 5,003,000,000 from the volume shown on Exhibit 88.

Q. Well, that was an adjustment downward in volume that the staff had made in connection with figures that were submitted by United? A. That is right.

Q. And so you simply took that same adjustment? A. Yes, sir.

Q. Now, when you come to the Bethany figure opposite nich you have footnote 2, I understand from what you say that you had to make more or less a prorata adjustment because the exact adjustment for Union Producing Company gas was not reflected in the exact figures? A. That is right.

Q. Well, can you tell us the detaiis of that so it will be in the record? A. Yes, sir.

Well, in Exhibit 88 they show from the Bethany field from non-associated, 16,003,000,000, and for the associated,

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7,407,000,000. That is a ratio that indicates about 31 percent of the gas is coming from Union Producing Company. Then by referring back to Exhibit 82 on this last page of Exhibit 82, the second page of Exhibit 82, they show a reduction in the volume of 2,806,000,000, and I took 31 percent of that, which is roughly 888,000,000, and I deducted that from the 7,407,000,000 to arrive at the figure for the Bethany field from associated on Exhibit 163.

Q. The figures you have just been stating are in cubic feet, I take it? A. That is right.

Q. The reason you had to do that was that the Staff had not itself broken down the reduction which the Staff made in the total volume from the Bethany field as between non-affiliated gas and Union Producing Gas? A. That is right.

Q. And you simply applied to that reduction made by the Staff the ratios as shown of the gas purchased from non-affiliated and purchased from Union? A. That is right.

Q. Now, in order to illustrate the way in which you have determined the price which you should use in column 3, take the Floyd field as an example. I am showing you here Exhibit 100, and in the Floyd field there are contracts Nos. 2173, 2172, 2174. That seems to be the contracts for the Floyd field.

1342

Now, just how did you determine that you should use the 3 cents in your adjustment? You can use one of the contracts as an example. A. Yes. For example, in the contract 2173, the price is shown as 3 cents, and the pressure base is 16.7 pounds. This contract is executed the 26th day of September, 1937, and the term extends to December 31, 1962, and I examined 2172 and it shows the same provisions and is executed on the same date, and 2174 shows the same provisions.

Q. Now, therefore, you disregarded the amendment that is reflected in this letter of July 18, 1947, which is contained in Exhibit 100 under the compilation of contract 2173 which has been previously referred to, and which increased the price to 4 cents effective June 26, 1947? That is right.

. . . . . .

1345

By Mr. Dougherty:

Q. Now, Mr. Maurer, in determining the price that you would use in column 3 on Exhibit 163, for the other fields shown under the districts shown on this Exhibit 163, did you proceed in the same manner as you have described with respect to the Floyd Field? A. Yes, sir.

Q. Now, I note with respect to Lake Bistineau, and Rodessa, you have a price there under 3 cents. How was that arrived at? A. In the case of Lake Bistineau, I believe the contract price was 3 cents.

. . . . . .

1349

Presiding Examiner: In regard to Floyd field. Now, what is the number of this contract?

Mr. Dougherty: 2173.

Presiding Examiner: Does that embrace all of the contracts in the Floyd field?

Mr. Dougherty: No, sir; he said 2172 was the second one, and it was dated the same date, September 26, 1937, which contained the 3-cent price, and is the same printed form of four pages, and 2174 which also contains the same number of pages, is dated the same date.

Presiding Examiner: All right. Now, those three instruments carry, he says, on their face, a price of 3 cents, and those are the three instruments out of all of the instru-

ments in Exhibit 100 which he relies upon to show the three cents?

Mr. Dougherty: For Floyd field.

Presiding Examiner: Now, we have that.

Mr. Dougherty: Now, the next is Lisbon.

By Mr. Dougherty:

Q. Now, with respect to the Lisbon field, what are the contracts you used, and from which you took the three cents?

Presiding Examiner: Let me ask another question. I hate to interrupt you, but you applied this 3-cent price to every contract with Union Producing Company in Floyd Field?

The Witness: To every contract? It is in every contract.

1350

Presiding Examiner: And these three contract numbers that you have given me are the only contracts in Floyd field with Union Producing by United?

The Witness: That is right.

Mr. DaPra: As of that date.

Mr. Dougherty: Well, that is contained in this exhibit.

Mr. DaPra: The one dated September 26, 1937?

Mr. Dougherty: That is right.

The Witness: Now, the Lisbon field, page 4, agreement dated June 19, 1944, it is contract No. 2576, and article 4 shows a 3-cent——

Presiding Examiner: Well, now, you see this is a conclusion.

The Witness: All right.

Mr. Fletcher: It is enough when he says, Mr. Examiner, that that is where he gets what he gets in this line.

Presiding Examiner: I think that is sufficient.

You get 3 cents from contract No. 2576 in the volume which has been labeled Exhibit No. 101?

The Witness: That is right.

Mr. Dougherty: And it is the contract dated June 19, 1944.

By Mr. Dougherty:

Q. Now, then, that is the contract you used for the Lisbon

1351

field? A. Yes, sir.

Q. And in Volume 101 there is a contract 2634, which was dated May 2, 1951. You did not use that contract? A. No, sir.

Q. Now, let us go to the Monroe field, and for the 3-cent figure what contract did you use?

Presiding Examiner: You are on line 3 now?

Mr. Dougherty: Line 3, yes.

The Witness: Well, we will start with——

By Mr. Dougherty:

Q. This is what exhibit number? A. This is Exhibit 100, and starting with——

Mr. Fletcher: From Exhibit 100, did he say?

The Witness: Yes, sir.

Presiding Examiner: Well, line 3 has Exhibit No. 101 on mine.

Mr. Dougherty: Well, it should be 100, both. That is wrong.

Mr. DaPra: What is that now?

Mr. Dougherty: The Monroe field is in both Exhibits 100 and 101.

Mr. DaPra: Well, how about Lisbon? Is Lisbon right?

Mr. Dougherty: We finished with Lisbon. That is in 101.

Mr. Fletcher: Well, should the exhibit be corrected and

1352

changed to——

Mr. Dougherty: For the Monroe field, it ought to be Exhibit 100 and Exhibit 101.

Presiding Examiner: All right.

Mr. Dougherty: You see, Exhibit 100 contained the Floyd field, and then a substantial part of the Monroe field, and then Exhibit 101 continued with the Monroe field, and contained also the Lisbon field.

The Witness: Starting with contract No. 2602—I can read a list of contracts here.

Presiding Examiner: What is the date of contract 2602?

The Witness: It is dated the 27th of June, 1947, and executed on the 30th day of June by the buyer.

Contract 2564 is dated the 14th day of December, 1943.

Mr. Fletcher: Are these all from Exhibit 100?

The Witness: Yes, sir. And there will be quite a number. 2556, dated the 22nd of October, 1942.

Contract 2534, dated January 19, 1940.

Contract 2480, dated December 23, 1938.

Contract 2478, dated November 22, 1938.

Contract 2477, dated November 22, 1938.

Contract 2472, dated August 5, 1938.

Contract 2468, dated the 26th day of September, 1937.

Contract 2464 is the same date, the 26th of September, 1937.

1353

Contract 2441, dated February 4, 1938.

Contract 2440, dated January 5, 1938.

Contract 2439, dated November 9, 1937.

Contract 2438, dated January 6, 1938.

Contract 2437, dated December 21, 1937.

Contract 2436, dated December 21, 1937.

Contract No. 2376, dated September 26, 1937.

Contract 2375, dated the 26th of September, 1937.

Contract 2374, dated September 26, 1937.
Contract 2372, dated September 26, 1937.
Contract 2370, dated September 26, 1937.
Contract 2369, dated September 26, 1937.
Contract 2368, dated September 26, 1937.
Contract 2367, dated September 26, 1937.
Contract 2366, dated September 26, 1937.
Contract 2365, dated September 26, 1937.
Contract 2364, dated September 26, 1937.
Contract 2363, dated September 26, 1937.
Contract 2362, dated September 26, 1937.
Contract 2361, dated September 26, 1937.
Contract 2360, dated September 26, 1937.
Contract 2358, dated September 26, 1937.
Contract 2357, dated September 26, 1937.

I believe these are all the same date, if I could just read the contract number and say the same date.

**1354**

Q. You better read the date. A. All right.
Contract 2356, dated September 26, 1937.
Contract 2355, dated September 26, 1937.
Contract 2354, dated September 26, 1937.
Contract 2353, dated September 26, 1937.
Contract 2352, dated September 26, 1937.
Contract 2351, dated September 26, 1937.
Contract 2350, dated September 26, 1937.
Contract 2349, dated September 26, 1937.
Contract 2348, dated September 26, 1937.
Contract 2347, dated September 26, 1937.
Contract 2346, dated September 26, 1937.
Contract 2345, dated September 26, 1937.
Contract 2344, dated September 26, 1937.
Contract 2343, September 26, 1937
Contract 2342, September 26, 1937.

(1354)

Contract 2341, September 26, 1937.
Contract 2340, September 26, 1937.
Contract 2339, September 26, 1937.

Presiding Examiner: I think it might be simpler if you just read the contract numbers off until you got to a different date. They will all be the same until you say that there is a different date?

The Witness: Yes, sir. I will check each one.

1355

2339, 2338, 2337, 2337, 2335, 2334, 2333, 2331.

Presiding Examiner: How about 2332?

Mr. Dougherty: No such number.

The Witness: 2330, 2329, 2328, 2327, 2326, 2325, 2324, 2323, 2322, 2321, 2320, 2319, 2318, 2317, 2316, 2315, 2314, 2313, 2312, 2311, 2309, 2308, 2307, 2306, 2305, 2303.

Mr. DaPra: Excuse me, is there a 2304 in there?

The Witness: No.

2302, 2301, 2300.

And that is the last one in book 100. There is another book of them.

Mr. Fletcher: Was that 100 that you read from?

Mr. Dougherty: Yes, that was 100.

Presiding Examiner: Perhaps it would be easier if you went through and saw how many there were and what numbers, and read them off in one sequence. If you could do that it would save time. You could say No. so and so to number so and so, inclusive, and the date, if they are the same date.

Mr. DaPra: I do not think the witness has too many more.

Mr. Dougherty: We have prepared a list, Mr. Examiner, of this group that is in 101. Starts with contract 2299, and Mr. Maurer can read that list off. Every one of them has the date September 26, 1937.

Presiding Examiner: 2299 is the first one?

1356

Mr. Dougherty: Yes, and he can go from there.

The Witness: 2297. It skips around.

Mr. Dougherty: It is not consecutive.

Presiding Examiner: Is it very long?

Mr. Dougherty: About 20 numbers.

Presiding Examiner: That will take about 20 seconds.

The Witness: 2299, 2297, 2294, 2292, 2291, 2289, 2285, 2281, 2280, 2279, 2278, 2276, 2274, 2273, 2271, 2270, 2267 through 2269, inclusive; 2265, 2262, 2260, 2259, 2247 through 2255, inclusive, 2235 through 2243, inclusive.

Mr. Dougherty: And that is both inclusive.

Presiding Examiner: Read that last one.

The Witness: 2235 through 2243, inclusive.

Presiding Examiner: All right.

Mr. Dougherty: And in each instance, Mr. Maurer, thos contracts all bear the date September 26, 1937?

The Witness: Yes, sir.

By Mr. Dougherty:

Q. And that completes the list of Monroe field contracts that you utilized? A. Yes, sir.

Q. Now, I note, Mr. Maurer, that there is one contract in Volume 100 under the Monroe field, 2613, which you did not use. Were you able to determine the volume of gas that was under that contract?

1357

A. No, sir. In the Staff exhibits and working papers, the volumes are not set out by individual contracts.

Q. Now, next is Exhibit 106, the Cotton field. The contracts for Cotton Valley are contained in Exhibit 106. Now, there is only one shown or included, I should say, in Exhibit 106 for Cotton Valley which is contract 858, and which of the various documents constituting that contract

(1357)

did you use for the source of the price which you stated for Cotton Valley in column 3, on Exhibit 163? A. It is an agreement made and entered into the 20th day of July, 1948, by and between Cotton Valley Operators Committee acting by and through its duly authorized chairman for and on behalf of, and as agent for all of those operators—Cotton Valley Unitization and Pressure Maintenance Agreement—hereinafter called Sellers, and United Gas Pipe Line Company, a corporation, of the State of Delaware, authorized to do business in the State of Louisiana, hereinafter called Buyer.

Presiding Examiner: Is that a contract between Union Producing Company and United that you are referring to?

Mr. Fletcher: That is a contract between United Gas Pipe Line Company and the Cotton Valley Operators Committee, which represents all producers in that field, and Union is one of the producers in the field.

Presiding Examiner: I see.

Mr. Fletcher: Is it not a direct contract with Union.

1358

It is a contract with the Operators Committee, and Union is one of those operators.

Presiding Examiner: I see. What is the contract number again?

The Witness: 858.

Mr. Fletcher: While I am clarifying it for Your Honor, the instrument being identified now is not the original. This is an amendment, and I think you will find that the origial which is there, too, was with the operators and all subsequent amendments were through the committee which was set up by the operators.

Presiding Examiner: So actually this contract represents a purchase of gas in which Union was a participant?

The Witness: Yes, and provisions of price are in Article 5.

Mr. Dougherty: That apparently, Mr. Examiner, is one blanket contract covering all of the Cotton Valley, and that is why there is only that one.

Presiding Examiner: I gather, Mr. Dougherty—I am not asking the witness because he is not a lawyer—that that contract provides the same for Union as it does for the others?

Mr. Dougherty: Yes, it does. There is one price applied to all.

By Mr. Dougherty:

Q. Now, you made no adjustment for the Greenwood-Waskom



field? A. No, sir.

Q. Now, then, Lake Bistineau, Volume 102, the contracts that you used are 2565, which is a contract dated March 2, 1944, and the contract No. 2548, which is a contract dated August 29, 1941, and contract No. 2591, dated—take out that last one.

Now, with regard to this contract, there is an adjustment shown in staff exhibit for the Lake Bistineau field. There is a footnote 1 on Exhibit 88, or, pardon me, it is footnote 11, which says that this is reduced three-quarters——

Mr. Fletcher: Pardon me, but is not Exhibit 88 as Mississippi River exhibit, and not a staff exhibit?

Mr. DaPra: I was going to point that out, Mr. Examiner.

Mr. Fletcher: That is an incorrect statement of fact, Mr. Examiner. It is a Mississippi River exhibit.

Mr. Dougherty: Just say exhibit.

A. Exhibit 88 shows there is provision for reduction of three-quarters of one percent.

Mr. Dougherty: That is a Staff working paper that was introduced.

Mr. Fletcher: That may be, but the exhibit is an exhibit sponsored by you.

Mr. Dougherty: You are right.

• • • • • • • • • • •

1362

By Mr. Dougherty:

Q. Have you during the noon recess examined Exhibit 102 and written down the contract numbers and dates which you used as a basis or source of the price which you put in column 3 for Rodessa? A. Yes, sir.

Q. Will you read into the record the contract numbers and the dates? A. Yes, sir.

Contract No. 2583, dated November 8, 1945.

Contract No. 2528, November 2, 1939.

1363

Contract 2526, dated November 2, 1939.
Contract 2542, dated November 8, 1940.
Contract 2543, dated November 26, 1940.
Contract 2580, dated March 23, 1945.
Contract 2567, dated April 6, 1944.
Contract 2566, dated August 26, 1943.
Contract 2560, dated March 31, 1943.
Contract 2559, dated March 26, 1943.
Contract 2547, dated August 6, 1941.
Contract 2445, dated December 9, 1937.
Contract 2444, dated December 8, 1937.
Contract 2431, dated December 23, 1937.
Contract 2430, dated December 7, 1937.
Contract 2423, dated December 8, 1937.
Contract 2418, dated September 26, 1937.
Contract 2417, dated September 26, 1937.

And contracts 2412 through 2414, inclusive, dated September 26, 1937.

Contract 2407, dated September 26, 1937.

Contract 2399, dated September 26, 1937.

Contract 2349, dated September 26, 1937.

Contract 2386 and 2384, dated September 26, 1937.

There is a group of contracts all dated September 26, 1937, as follows:

Contracts 2124 through 2128, inclusive; contracts 2120



and 2121, and contracts 2097 through 2118, inclusive.

That is all.

Q. Then will you give us the information respecting the Sibley field. A. Yes. Contracts 2529 and 2530, dated November 2, 1939.

Presiding Examiner: That is in Exhibit 103; is that right?

The Witness: Yes, sir.

Presiding Examiner: That is a different volume than the prior numbers.

All right.

Mr. Dougherty: Did you get the numbers, Mr. Fletcher?

Mr. Fletcher: No.

By Mr. Dougherty:

Q. Read them again, please. A. 2529 and 2530. They are both dated November 2, 1939.

Q. Does that complete your answer for the Sibley field? A. Yes, sir.

Q. Then will you take the Sligo field, giving us the exhibit number first, and then the contract numbers? A. Yes, sir. Exhibit 103, contract 1143, dated December 5, 1947.

Contract 2622, which is a letter dated March 31, 1950.

A letter of March 31, 1950, designated contract 2620.

Another letter of the same date, designated 2614, and a

letter of March 31, 1950, designated 2615.

Contracts 2597 through 2599, inclusive, dated November 20, 1946.

Contract 2582, dated December 3, 1945.

Contract 2537, dated April 3, 1940.

Contract 2536, dated March 4, 1940.

Contract 2473, dated September 26, 1937.

Contract 2454, dated September 26, 1937.

Contract 2429, dated March 21, 1938.

Contract 2428, dated October 21, 1941.

Contract 2151 through 2158, inclusive, dated September 26, 1937.

Contract 2148 dated September 26, 1937.

Contracts 2142 and 2145, dated September 26, 1937.

Contract 2141, dated September 26, 1941.

Contracts 2139 and 2140, dated September 26, 1937.

And contract 2138, dated September 26, 1941.

Q. Does that complete your answer on the Sligo field? A. Yes, sir.

Q. Then I note the next in which you have made any adjustment is Bethany field in Texas. Will you give us those contracts, identifying which are from Exhibit 104, and which from Exhibit 105? A. Yes, sir. The basis used there is the amendment to the gas purchase contract of February 15, 1949, and it amends



contracts which are in volume 104, as follows:

Contracts 1041, 1083, 1085, 1113, 1114, and 1116, and the following contracts in volume 105 are 1132, 1137, 1151, and 1168.

Q. However, the price you used was taken from the amendment you first designated? A. Yes, sir.

Q. Does that cover Bethany? A. Yes, sir.

Q. Then take Rodessa. A. We have covered Rodessa before, under Louisiana, the same contracts applied to both.

Q. Then Waskom. A. In the Waskom field——

Mr. Fletcher: Excuse me. You said you covered Rodessa under what?

The Witness: Up above there in——

Mr. Fletcher: Oh, I see in the Shreveport district.

The Witness: Yes, sir.

In Waskom, it is contracts 2094 and 2096, dated September 26, 1937.

By Mr. Dougherty:

Q. And that is contained in Exhibit 106? A. Yes, sir; 106.

Q. Does that complete your answer for Waskom? A. Yes, sir.



Q. Then let us take under the Dallas district, the Carthage field. A. The Carthage field?

Exhibit 107. Contract 2578, dated March 13, 1945. That is the only one.

Q. Then take up the Joaquin, La., field. A. That is also in Exhibit 107, contracts 1169 and 1170 dated March 30, 1948.

Q. Does that complete Joaquin in Louisiana? A. Yes, sir.

Q. Then give us the Joaquin in Texas. A. That is also in Exhibit 107, contract 2540, dated November 7, 1940.

Q. Now, does that complete you—oh, no, Willow Springs. A. Yes, sir. Willow Springs is also in Exhibit 107. It is contract 2551, dated February 28, 1942.

Mr. DaPra: Mr. Maurer, did you give us the North Jacksonville field?

The Witness: We did not change anything in North Jacksonville.

• • • • • • • • • • •

1374

By Mr. Fletcher:

Q. Mr. Maurer, give us the explanation of the source of the prices which you have shown on Exhibit 165 in column 3? A. In the Durkee Field, in Exhibit 110, contract No. 2608, dated July 1, 1948. That applies to both natural and casinghead.

In the Fairbanks, an amendment entered into on May 14, 1948, to contract 907 was used.

Mr. Fletcher: What was that date again, please?

The Witness: May 14, 1948.

On the wells portion, contract 2604, dated September 18, 1947, and 2533, dated November 29, 1939, were used. In the Greta, Tom O'Connor contracts 2596, dated March 26, 1946; 2549, dated April 26, 1949, and 2593, dated June 26, 1945, were used.

In the East McFaddin field, contract 2568, dated April 27, 1944, was used.

In the Weedville Field, contract 2609, dated October 4, 1948.

In the Refugio Field, contract No. 2586, dated November 8, 1945.

In the Sealy Field, contract 1380, dated May 29, 1950.

In the Spanish Camp field, contract 1298, dated November 7, 1949.

By Mr. Dougherty:

1375

Q. Now, all of those are contained in Exhibit 110? A. Yes, sir.

Q. Then would you turn to the Agua Dulce. A. The Agua Dulce contracts are in Exhibit No. 108.

Contract 2539, dated June 26, 1940.

Contract 2538, dated June 26, 1940.

Contract 2523, 2517, 2512, 2511, 2509, all dated February 25, 1939.

Contract 2506, dated June 26, 1940.

And the following contracts dated February 25, 1939——

Q. Does that complete—— A. No, pardon me, I want to summarize these contract numbers.

Contracts 2497 to 2509, inclusive; contracts 2492, 2493, 2495, 2486, and 2483, all of those contracts were dated February 25, 1939.

2481, dated February 24, 1939, 2475, dated October 7, 1938; 2471, dated June 29, 1938; 2462, dated June 3, 1938; 2435, dated March 26, 1938; 2434, dated March 26, 1938; 2432, dated February 1, 1938, and the following contracts dated September 26, 1937: Contracts 2001 through 2010, inclusive, and contract No. 2012.

That is all.

• • • • • • • • • • •

**1378**

Mr. Fletcher: There is extant on the records of the Commission the fact that United Gas Corporation owns all of the common stock of United Gas Pipe Line Company and of Union Producing Company. That fact is here, I am sure.

# VOL.

# II

No. 567

JOINT APPENDIX

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IN THE

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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## No. 13,199

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MISSISSIPPI RIVER FUEL CORPORATION,
*Petitioner,*

v.

FEDERAL POWER COMMISSION,
*Respondent.*

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**Petition for Review of Order of the Federal Power Commission**

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**Volume II**

**Exhibit Nos. 77 to 166; Items R and S**

**(Joint Appendix Pages 381-738; Record Pages 1488-6827)**

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IN THE

# United States Court of Appeals

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**Petition for Review of Order of the Federal Power Commission**

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## JOINT APPENDIX

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**Volume II**

**Exhibit Nos. 77 to 166; Items R and S**

**(Joint Appendix Pages 381-738; Record Pages 1488-6827)**

Note

It is not economically feasible to reproduce pages 382-510. Many of the pages, extremely reduced as to be difficult to read in the original, would require many Microcards to be reproduced at all. We resume shooting with page 511 of this Volume.

— Photographer

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Sheet 1 of 3

**Hearing Exhibit No. 96**

UNITED GAS PIPE LINE COMPANY

COST OF SERVICE ALLOCATED TO GAS DELIVERED UNDER RATE SCHEDULE PL-2 TO MISSISSIPPI RIVER FUEL CORPORATION
(G-1447 FACILITIES)

| | Cost of Service Actual Peak Demand |
|---|---|
| Transmission Costs in Central Rate Zone | $1,068,706 |
| Cost of Gas as Delivered to Shreveport District | 5,049,681 |
| Total | $6,118,387 |

1818

Sheet 2 of 3

UNITED GAS PIPE LINE COMPANY

COST OF GAS TRANSPORTED THROUGH G-1447 FACILITIES AT BEAUMONT-SHREVEPORT DISTRICT LINES

Unit Costs—From Exhibit 78A, Sheet 22

| | Commodity | Demand |
|---|---|---|
| Production | $.08984795 | $ ..... |
| Transmission | .02240734 | 5.305723 |
| Total | $.11225529 | $5.305723 |

Amount to Mississippi River Fuel Corporation

| | Volumes Mcf | Cost of Service Actual Peak Demand |
|---|---|---|
| Commodity | 39,751,128 | $4,462,274 |
| Actual Peak | 110,712 | 587,407 |
| Total | | $5,049,681 |

UNITED GAS PIPE LINE COMPANY

COST OF TRANSPORTING GAS THROUGH G-1447 FACILITIES (L-129) THROUGH SHREVEPORT AND MONROE DISTRICTS

| | |
|---|---|
| Annual Volume L-129 | 98,105,119 Mcf |
| Peak Day Volume L-129 | 324,156 Mcf |
| Distance Transported | 169 miles |

Transmission Cost—Unit Exhibit 78A, Sheet 11

| | |
|---|---|
| Commodity | $ .096277230/MMcf mile |
| Demand | $ .022296615/Mcf mile |
| Other—Per meter | $50.79 |

Transmission Cost—169 Miles

| | |
|---|---|
| Commodity | $ .01627 per Mcf |
| Demand | $3.77 per Mcf |

Costs on L-129

| | |
|---|---|
| Commodity | $1,596,170 |
| Demand | 1,222,068 |
| | $2,818,238 |

Amount to Mississippi River Fuel Corporation

| | Volumes Mcf | Cost of Service Actual Coincidental Peak Demand |
|---|---|---|
| Commodity | 39,751,128 | $ 646,750 |
| Actual Peak Day | 110,712 | 417,385 |
| Other Costs—Units | 90 | 4,571 |
| Total Cost of Transporting G-1447 Gas to Mississippi Northern Area | | $1,068,706 |

1820

**Hearing Exhibit No. 97**

Sheet 1 of 2

UNITED GAS PIPE LINE COMPANY

CALCULATION OF COST OF SERVICE UNDER RATE SCHEDULE PL-3 TO MISSISSIPPI RIVER FUEL CORPORATION USING COST OF SERVICE IN EXHIBIT 77B

| | |
|---|---|
| Annual Volume | 73,950,800 Mcf |
| Peak Day Volume | 202,939 Mcf |
| Transmission Costs | |
| Commodity | $ 934,886 |
| Demand | 594,002 |
| Other—120 Meter Units | 5,789 |
| | $1,534,677 |
| Production Costs | 6,996,782 |
| Total Cost of Service PL-3 | $8,531,459 |

UNITED GAS PIPE LINE COMPANY

## Calculation of Unit Cost of Transmission and Production—Central Rate Zone Excluding Gas Transported for Others and Gas Transported Through Line L-129

| | Annual Volume | Peak Day | Meter Units | Transmission Costs | | | |
|---|---|---|---|---|---|---|---|
| | | | | Total Cost | Demand | Commodity | Other |
| Total Transmission | 457,492,319 | 1,498,456 | 6,317 | $10,732,125 | $4,516,683 | $5,909,921 | $305,521 |
| Less: | | | | | | | |
| Gas Transported for Others | 89,772,057 | 256,994 | 300 | 1,529,705 | 609,212 | 905,256 | 15,237 |
| Gas Transported Through Line L-129 | 98,105,119 | 324,156 | | 2,818,238 | 1,222,068 | 1,596,170 | |
| Balance—Cost of Transmission | 269,615,143 | 917,406 | 6,017 | $6,384,182 | $2,685,403 | $3,408,495 | $290,284 |
| Transmission Unit Cost | | | | | $2.927 | $.012642 | $48.24 |
| Production Costs—Central Rate Zone—Exhibit 78A—Line 10, sheet 10 | | | | | $.094614018 | | |

1822

Sheet 1 of 2

**Hearing Exhibit No. 98**

UNITED GAS PIPE LINE COMPANY

## Cost of Service to Texas Gas Transmission Corporation
## (Cost of Service—Exhibit 77B)

| | Volume Mcf | Unit Cost | Cost of Service | Total |
|---|---|---|---|---|
| Gas Delivered from Central Rate Zone | | | | |
| Transmission Costs | | | | |
| Annual | 15,458,222 | $.012642 | $ 195,423 | |
| Peak Day | 50,420 | $2.927 | 147,579 | |
| Meter Units—est. | 120 | $48.24 | 5,789 | |
| | | | $ 348,791 | |
| Production Costs | | $.094614 | 1,462,564 | $1,811,355 |
| Gas Delivered from G-1447 Facilities | | | | |
| Transmission Costs Central Rate Zone | | | | |
| Annual Volume | 39,751,128 | $.01627 | $ 646,751 | |
| Peak day | 151,260 | $3.77 | 570,250 | |
| Other per Meter—est. | 120 | $50.79 | 6,095 | |
| | | | $1,223,096 | |
| Cost of Gas at Beaumont Shreveport Line: | | | | |
| Commodity Volume | 39,751,128 | $.112255 | $4,462,263 | |
| Demand Volume | 151,260 | $5.3057 | 802,540 | |
| | | | $5,264,803 | 6,487,899 |
| Total Cost of Service | | | | $8,299,254 |

1823

Sheet 2 of 2

UNITED GAS PIPE LINE COMPANY

SALES TO TEXAS GAS TRANSMISSION CORPORATION

| | Annual Mcf | Peak Day Mcf |
|---|---|---|
| Total Sales—PL-4 | 55,209,350 | 201,680 |
| Less: Gas Delivered from G-1447 Facilities | 39,751,128 | 151,260 |
| Gas Delivered from Central Rate Zone | 15,458,222 | 50,420 |

**Excerpts From Hearing Exhibit No. 100**

2307

July 18, 1947

Union Producing Company
Shreveport, Louisiana

Gentlemen:

We have agreed with you that, effective 7:00 A.M., June 26, 1947, the price to be paid you for gas thereafter purchased from you under the provisions of the gas purchase contracts now in effect between our companies covering your leases in the fields hereinafter referred to is increased to four cents (4¢) per thousand cubic feet.

The fields above referred to are the following:

Monroe, Floyd, Lisbon, Lake Bistineau, and Sligo in the State of Louisiana;

Willow Springs Field in the State of Texas; and

Joaquin Field in the States of Louisiana and Texas.

If the foregoing correctly sets forth our agreement with respect to the above matter, will you please sign this letter

in duplicate in the space provided below for your signature, and return one copy thereof to us.

Yours very truly,

UNITED GAS PIPE LINE COMPANY
By M. A. ABERNATHY
*Vice President*

Accepted and Agreed to this
18th day of July, 1947.

UNION PRODUCING COMPANY
By H. R. BENNETT
*Vice President*

**2308**

## GAS PURCHASE CONTRACT

FLOYD FIELD — CONTRACT NO. 2173

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a corporation, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter designated as Buyer.

WITNESSETH THAT:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct of Buyer's business and in accordance with the terms and provisions hereof, all merchantable natural gas produced from all wells now drilled or which may hereafter be drilled on the hereinafter described premises during the term of this contract; subject, however, to the reservation by Seller

of sufficient natural gas for the development and operation of its oil and gas properties located in the field in which said premises are located and such other natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises; said premises being situated in the Parish of West Carroll, State of Louisiana, and being described as follows, to wit:

(1620) E½ of the SE¼ of Sec. 3; E½ of the E½ of Section 10; NW¼ of the NE¼ of Sec. 10, the SW¼ of Sec. 11, all of Section 12, lying West of Bayou Macon; Northeast Quarter and the N½ of the N½ of the SE¼ of Sec. 14; W½ of the NE¼ and the N½ of the NW¼ of the SE¼ of Section 15, all in Township 19, Range 10 East, Parish of West Carroll, Louisiana.

* * * * * * * * * *

**2310**

10. The price per thousand cubic feet to be paid Seller by Buyer for natural gas delivered hereunder shall be as follows:

Three Cents (3¢)

* * * * * * * * * *

15. This contract shall become effective on September 26, 1937, and shall continue in full force and effect until December 31, 1962; but in case Seller's right to produce natural gas from the above described premises is dependent upon any oil and gas lease or mineral rights, the term hereof shall be limited to the life of such lease or of such mineral rights, including any renewals and extensions thereof, but in no event shall extend beyond December 31, 1962.

* * * * * * * * * *

2311

IN WITNESS WHEREOF, this contract has been executed as of the 26th day of September, 1937.

UNION PRODUCING COMPANY
By R. H. HARGROVE
*Vice-President* (SEAL)
Attest:
[SIGNATURE ILLEGIBLE]
*Assistant Secretary*

Witnesses:
LOLITA RODGERS
HARRIET L. VINCENT

UNITED GAS PIPE LINE COMPANY
By M. A. ABERNATHY
*Vice-President* (SEAL)
Attest:
J. H. MIRACLE
*Secretary*

Witnesses:
LOLITA RODGERS
HARRIET L. VINCENT

* * * * * * * * * *

2376

## GAS PURCHASE CONTRACT

MONROE FIELD — CONTRACT NO. 2602

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a corporation, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter designated as Buyer.

WITNESSETH THAT:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considera-

tions, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct of Buyer's business and in accordance with the terms and provisions hereof, all merchantable natural gas produced from all wells now drilled or which may hereafter be drilled on the hereinafter described premises during the term of this contract; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of its oil and gas properties located in the field in which said premises are located and such other natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises; said premises being situated in the Parish of Ouachita, State of Louisiana, and being described as follows, to-wit:

W½ of SE¼ of Section 5, less, save and except that portion lying north of the continuation of the north line of Lot 8 of Delery's Island Colony; N½ of NE¼ of Section 8; SE¼ of SE¼ of Section 10; all that portion of Lots 2, 3 and N⅔ of Lot 5 of Delery's Island Colony, lying east of the Ouachita City and Monroe Public road, as per plat thereof in Notarial Book T, page 332 of the records of Ouachita Parish, La.; Lots 1, 2, 3, and 4 of Delery's Island Colony as per survey made by L. N. Polk and plat thereof filed in back part of Book Y of the records of Ouachita Parish, Louisiana, all in Township 18 N, Range 4 E, and also

All of S½ of Lot 4; all of S½ of Lot 5; all of Lots 6 and 7 of Delery's Island Colony as shown by map in Conveyance Book T, page 332, lying east of the Monroe-Ouachita City Public road and all of Lots 9 and 10 of Delery's Island Colony as shown by map in Book T, page 332, all in Township 18 N, Range 4 E, and also

All that portion of N½ of Lot 4 of Delery's Island Colony which lies between the Ouachita City and Monroe Public road and the Bayou DeSiard, the said land being bounded on the east by Bayou DeSiard, on the west by Ouachita City and Monroe public road and containing 4 acres, more or less, as particularly described in deed dated March 30, 1920, recorded in Conveyance Book 102, page 525 of the records of Ouachita Parish, Louisiana, all of the above property containing in the aggregate 483.25 acres, more or less.

* * * * * * * * * * *

2378

10. The price per thousand cubic feet to be paid Seller by Buyer for natural gas delivered hereunder shall be as follows:

Three (3) Cents.

* * * * * * * * * * *

15. This contract shall continue in full force and effect until December 31, 1962; but in case Seller's right to produce natural gas from the above described premises is dependent upon any oil and gas lease or mineral rights, the term hereof shall be limited to the life of such lease or of such mineral rights, including any renewals and extensions thereof, but in no event shall extend beyond December 31, 1962.

* * * * * * * * * * *

2379

IN WITNESS WHEREOF, this contract has been executed on this 27th day of June, 1947, by Seller, and executed on this 30th day of June, 1947, by Buyer.

UNION PRODUCING COMPANY
By H. R. BENNETT
*Vice-President* (SEAL)

Attest:
J. H. MIRACLE
*Secretary*

Witnesses:
FAYE KETCHAM
MOLLY MCILWAIN

UNITED GAS PIPE LINE COMPANY
By M. A. ABERNATHY
*Vice-President* (SEAL)

Attest:
J. H. MIRACLE
*Secretary*

Witnesses:
C. P. O'DOWD
RUTH JONES

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**Excerpts From Hearing Exhibit No. 101**

LISBON FIELD CONTRACT No. 2576

2971

THIS AGREEMENT made and entered into this 19th day of June, 1944, by and between UNION PRODUCING COMPANY, a corporation, hereinafter called "Union" and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter called "United";

WITNESSETH:

WHEREAS, Union owns oil, gas and mineral leases in what is known as the Lisbon Gas Field, Claiborne Parish, Louisi-

ana, upon which Union has completed various wells which are now producing or capable of producing natural gas; and

WHEREAS, heretofore Union and United have entered into various Gas Purchase Contracts, as will appear from the Records of Claiborne Parish, Louisiana, under the terms of which Union has agreed to sell and United has agreed to purchase merchantable natural gas produced from certain gas wells of Union located in said Lisbon Field; and

WHEREAS, Union has a contract with Claiborne Gasoline Company for the separation, extraction and marketing of various liquid and liquefiable hydrocarbons contained in the gas produced in said field, both from presently producing wells and from any new wells hereafter drilled by Union; and

WHEREAS, United desires that before delivery of said gas to it Union shall extract or cause to be extracted such liquid and liquefiable hydrocarbons, such substances being objectionable to United in the operation of its pipe line system;

**2972**

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants and agreements hereinafter set forth, to be kept and performed by the parties hereto, said parties do hereby covenant and agree as follows:

* * * * * * * * * *

**2974**

ARTICLE IV

The unit of measurement shall be one thousand (1,000) cubic feet of gas, computed at a base pressure of two pounds gauge pressure above an assumed atmospheric pressure of fourteen and seven-tenths (14.7) pounds per

square inch at an assumed standard base and flowing temperature of sixty (60) degrees Fahrenheit and an assumed standard base and flowing specific gravity of six-tenths (.6), and said gas shall be assumed to obey Boyle's law. United shall pay Union the sum of three cents (3¢) per thousand cubic feet for all gas so purchased.

* * * * * * * * * *

**2977**

ARTICLE VII

This agreement shall be co-extensive in term with the Processing Contract between Union and Claiborne Gasoline Company, and if for any reason said Processing Contract shall not become effective or having become effective shall thereafter become cancelled or terminated, then this agreement shall likewise either not become effective or shall be cancelled and terminated forthwith upon the cancellation or termination of said Processing Contract, as the case may be.

The provisions hereof shall be binding upon the parties hereto and their respective successors and assigns, except that Union shall not sublease the pipe line system and equipment leased to it by United without first obtaining United's consent thereto in writing.

2978

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed by their respective corporate officers, thereunto duly authorized, on the date hereinabove set out.

UNION PRODUCING COMPANY
By R. H. HARGROVE
*Vice President* (SEAL)

Attest:
J. H. MIRACLE
*Secretary*

Witnesses:
MORRIS C. FOSTER
A. C. MONETTE, JR.

UNITED GAS PIPE LINE COMPANY
By M. A. ABERNATHY
*Vice President* (SEAL)

Attest:
J. H. MIRACLE
*Secretary*

Witnesses:
MORRIS C. FOSTER
A. C. MONETTE, JR.

---

**Excerpts From Hearing Exhibit No. 102**

3054

GAS PURCHASE CONTRACT

LAKE BISTINEAU FIELD CONTRACT NO. 2565

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a corporation, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter designated as Buyer.

(3054)

WITNESSETH THAT:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct of Buyer's business and in accordance with the terms and provisions hereof, all merchantable natural gas produced from all wells now drilled or which may hereafter be drilled on the hereinafter described premises during the term of this contract; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of its oil and gas properties located in the field in which said premises are located and such other natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises; said premises being situated in the Parishes of Bossier, Bienville and Webster, State of Louisiana, and being described as follows, to-wit:

(30018) All of the land belonging to the State of Louisiana within the meander lines of Lake Bistineau, Township 16 North, Range 10 West, Bossier, Bienville and Webster Parishes, Louisiana, comprising 5,937.45 acres, more or less.

* * * * * * * * * *

3055

7. Buyer shall have the right at Buyer's option, if at any time the natural pressure in any well or wells of Seller located on the above described premises is not sufficient to deliver natural gas in commercial quantities into Buyer's main pipe lines against the working pressures therein, to install field compressors or utilize existing field or main line compressors for the purpose of reducing the working pressure in Buyer's gathering lines to which such well or

wells are connected so that the well or wells may deliver natural gas against the reduced working pressure.

It is recognized that Buyer's requirements of natural gas may fluctuate from time to time and that said compressor stations may not be operated continuously.

In the event Buyer installs field compressors or utilizes existing field or main line compressors, as above provided, then the price to be paid by Buyer to Seller hereunder for all natural gas delivered thereafter from the wells connected to such compressors shall be reduced three-fourths of one cent (¾¢) per thousand cubic feet whether such compressors are operated or not; provided that if it should be necessary for Buyer to install additional compressors or utilize other existing compressors in order for it to make more than one compression of the natural gas, the price to be paid by Buyer to Seller hereunder for all natural gas delivered thereafter from the wells connected to such compressors shall be reduced one and one-half cents (1½¢) per thousand cubic feet whether such compressors or any part of them are operated or not.

3056

Buyer's exercise of its option to install compressors or connect said wells to existing compressors shall not place any obligation on Buyer to maintain such installation in place, and Buyer shall have the right at any time, upon thirty (30) days' written notice to Seller, to remove such compressors or disconnect said wells from such compressors.

• • • • • • • • • • •

10. The price per thousand cubic feet to be paid Seller by Buyer for natural gas delivered hereunder shall be as follows:

Three Cents (3¢).

• • • • • • • • • • •

(3056)

15. This contract shall continue in full force and effect until December 31, 1962; but in case Seller's right to produce natural gas from the above described premises is dependent upon any oil and gas lease or mineral rights, the term hereof shall be limited to the life of such lease or of such mineral rights, including any renewals and extensions thereof, but in no event shall extend beyond December 31, 1962.

• • • • • • • • • • •

3057

IN WITNESS WHEREOF, this contract has been executed on this 2nd day of March, 1944, by Seller, and executed on this 2nd day of March, 1944, by Buyer.

UNION PRODUCING COMPANY
By R. H. HARGROVE
*Vice-President*

Attest:
J. H. MIRACLE
*Secretary*

Witnesses:
MORRIS C. FOSTER
[SIGNATURE ILLEGIBLE]

UNITED GAS PIPE LINE COMPANY
By M. A. ABERNATHY
*Vice-President*

Attest:
J. H. MIRACLE
*Secretary*

Witnesses:
MORRIS C. FOSTER
[SIGNATURE ILLEGIBLE]

3115

# GAS PURCHASE CONTRACT

RODESSA FIELD CONTRACT No. 2583

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a corporation, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter designated as Buyer.

WITNESSETH THAT:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct of Buyer's business and in accordance with the terms and provisions hereof, all merchantable natural gas produced from all wells now drilled or which may hereafter be drilled on the hereinafter described premises during the term of this contract; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of its oil and gas properties located in the field in which said premises are located and such other natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises; said premises being situated in the County of Cass, State of Texas, and being described as follows, to-wit:

(7845) Three (3) tracts of land in the James Davenport Survey, Cass County, Texas, aggregating 148⅓ acres, and more particularly described as follows:

• • • • • • • • • • •

3117

7. Buyer shall have the right at Buyer's option, if at any time the natural pressure in any well or wells of Seller

located on the above described premises is not sufficient to deliver natural gas in commercial quantities into Buyer's main pipe lines against the working pressures therein, to install field compressors or utilize existing field or main line compressors for the purpose of reducing the working pressure in Buyer's gathering lines to which such well or wells are connected so that the well or wells may deliver natural gas against the reduced working pressure.

It is recognized that Buyer's requirements of natural gas may fluctuate from time to time and that said compressor stations may not be operated continuously.

In the event Buyer installs field compressors or utilizes existing field or main line compressors, as above provided, then the price to be paid by Buyer to Seller hereunder for all natural gas delivered thereafter from the wells connected to such compressors shall be reduced three-fourths of one cent (¾¢) per thousand cubic feet whether such compressors are operated or not; provided that if it should be necessary for Buyer to install additional compressors or utilize other existing compressors in order for it to make more than one compression of the natural gas, the price to be paid by Buyer to Seller hereunder for all natural gas delivered thereafter from the wells connected to such compressors shall be reduced one and one-half cents (1½¢) per thousand cubic feet whether such compressors or any part of them are operated or not.

**3118**

Buyer's exercise of its option to install compressors or connect said wells to existing compressors shall not place any obligation on Buyer to maintain such installation in place, and Buyer shall have the right at any time, upon thirty (30) days' written notice to Seller, to remove such compressors or disconnect said wells from such compressors.

* * * * * * * * * *

10. The price per thousand cubic feet to be paid Seller by Buyer for natural gas delivered hereunder shall be as follows:

Four Cents (4¢) per MCF.

* * * * * * * * * *

15. This contract shall continue in full force and effect until December 31, 1962; but in case Seller's right to produce natural gas from the above described premises is dependent upon any oil and gas lease or mineral rights, the term hereof shall be limited to the life of such lease or of such mineral rights, including any renewals and extensions thereof, but in no event shall extend beyond December 31, 1962.

* * * * * * * * * *

**3119**

IN WITNESS WHEREOF, this contract has been executed on this 8th day of November, 1945, by Seller, and executed on this 8th day of November, 1945, by Buyer.

UNION PRODUCING COMPANY
By R. H. HARGROVE
*Vice-President* (SEAL)
Attest:
J. H. MIRACLE
*Secretary*

Witnesses:
[SIGNATURE ILLEGIBLE]
FRANCES EMMER

UNITED GAS PIPE LINE COMPANY
By M. A. ABERNATHY
*Vice-President* (SEAL)
Attest:
J. H. MIRACLE
*Secretary*

Witnesses:
[SIGNATURE ILLEGIBLE]
FRANCES EMMER

**Excerpts From Hearing Exhibit No. 103**

**3605**

## GAS PURCHASE CONTRACT

SLIGO FIELD CONTRACT No. 1143

THIS CONTRACT made and entered into by and between TRIANGLE DRILLING COMPANY, INC. and UNION PRODUCING COMPANY, both corporations, hereinafter collectively designated as Seller, and UNITED GAS PIPE LINE COMPANY, a Delaware corporation, hereinafter designated as Buyer;

WITNESSETH:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct of Buyer's business and in accordance with the terms and provisions hereof, all merchantable natural gas produced from below a depth of 3200 feet below the surface of the land from all wells now drilled or which may hereafter be drilled on the hereinafter described premises during the term of this contract; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of said premises and such other natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises; said premises being situated in the Parish of Bossier, State of Louisiana, and being described as follows, to-wit:

**3606**

Section 13, Township 17 North, Range 12 West.

* * * * * * * * * *

3616

11. The price to be paid Seller by Buyer for natural gas delivered hereunder and for the natural gasoline and condensate content thereof shall be as follows:

(a) Four cents (4¢) per thousand cubic feet of natural gas; and

(b) A royalty on natural gasoline and condensate extracted and separated from the natural gas delivered hereunder, * * *

* * * * * * * * * *

3620

* * * * * * * * * *

16. This agreement shall continue and remain in full force and effect for a period of ten (10) years from the date upon which deliveries of gas are commenced hereunder and shall continue in force and effect thereafter for successive periods of one (1) year each, provided, however,

3621

that either party hereto may terminate this agreement at the end of the original term or any succeeding annual period by giving to the other party at least ninety (90) days' prior written notice of the intention of the party giving such notice to terminate this agreement.

* * * * * * * * * *

3624

IN WITNESS WHEREOF, this contract has been executed on this 24th day of November, 1947, by Seller, and executed on this 5th day of December,

3625

1947, by Buyer.

TRIANGLE DRILLING COMPANY, INC.,
By A. J. HODGES, *President.*

ATTEST:

W. E. RICKS, *Secretary.*

WITNESSES:
MARY J. CROCK,
J. G. MCCULLOUGH,

UNION PRODUCING COMPANY,
By H. R. BENNETT, *Vice President.*

ATTEST:

J. H. MIRACLE, *Secretary.*

*Seller.*

WITNESSES:
D. H. MASTEN,
MAXINE BENNETT.

UNITED GAS PIPE LINE COMPANY,
By ED PARKER, *Vice President.*

ATTEST:

J. H. MIRACLE, *Secretary.*

*Buyer.*

WITNESSES:
M. L. POWELL,
RUTH JONES,

---

3887

## GAS PURCHASE CONTRACT

SIBLEY FIELD — CONTRACT No. 2529

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a corporation, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter designated as Buyer.

WITNESSETH THAT:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct of Buyer's business and in accordance with the terms and provisions hereof, all merchantable natural gas produced from all wells now drilled or which may hereafter be drilled on the hereinafter described premises during the term of this contract; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of its oil and gas properties located in the field in which said premises are located and such other natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises; said premises being situated in the Parish of Webster, State of Louisiana, and being described as follows, to-wit: (30112) NE¼ of SE½ of Section 35, Township 18 North, Range 9 West.

* * * * * * * * * *

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10. The price per thousand cubic feet to be paid Seller by Buyer for natural gas delivered hereunder shall be as follows: Three (3¢) Cents.

* * * * * * * * * *

15. This contract shall continue in full force and effect until December 31, 1962; but in case Seller's right to produce natural gas from the above described premises is dependent upon any oil and gas lease or mineral rights, the term hereof shall be limited to the life of such lease or of such mineral rights, including any renewals and extensions thereof, but in no event shall extend beyond December 31, 1962.

* * * * * * * * * *

IN WITNESS WHEREOF, this contract has been executed on this 2 day of November, 1939, by Seller, and executed on this 2 day of November, 1939, by Buyer.

UNION PRODUCING COMPANY
By R. H. HARGROVE, *Vice-President.*

ATTEST:
J. H. MIRACLE, *Secretary.*

WITNESSES:
GRACE DANIELS,
[SIGNATURE ILLEGIBLE]

UNITED GAS PIPE LINE COMPANY
By M. A. ABERNATHY, *Vice-President.*

ATTEST:
J. H. MIRACLE, *Secretary.*

WITNESSES:
LOIS CRESSLAND,
MARJORIE LESTER.

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**Excerpts From Hearing Exhibit No. 104**

## AMENDMENT TO GAS PURCHASE CONTRACTS

BETHANY FIELD — CONTRACT NOS. 1041 ET AL.

THIS AGREEMENT made and entered into this 15th day of February, 1949, by and between UNION PRODUCING COMPANY, a Delaware corporation, hereinafter designated as "Seller", and UNITED GAS PIPE LINE COMPANY, a Delaware corporation, hereinafter designated as "Buyer",

WITNESSETH:

WHEREAS, certain Gas Purchase Contracts, to which Seller and Buyer are parties, have heretofore been entered into, as set forth and described in Exhibit "A" attached hereto; under each of which contracts Seller agreed to sell

and Buyer agreed to purchase all of Seller's interest in all gas produced from the premises covered thereby; and

WHEREAS, Seller and Buyer desire that each of said Gas Purchase Contracts set forth and described in Exhibit "A", in so far as each of said Gas Purchase Contracts covers Seller's interest in all gas produced from the premises covered thereby, be amended in the particulars hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises and of the mutual benefits accruing and to accrue to the parties hereto by virtue of the execution thereof, said parties covenant and agree, as follows:

**3942**

1. From and after January 26, 1949, Article 10 of each of said Gas Purchase Contracts set forth and described in Exhibit "A", in so far, but only in so far, as said Article 10 applies to Seller's interest in the gas produced from the premises covered by each of said Gas Purchase Contracts, shall be and is hereby changed and amended to thereafter said as follows:

> "10. The price to be paid by Buyer to Seller for each one thousand (1,000) cubic feet of gas sold and delivered to Buyer hereunder shall be five cents (5¢) for a period of five (5) years commencing on January 26, 1949, and six cents (6¢) hereafter."

2. From and after January 26, 1949, Article 15 of each of said Gas Purchase Contracts set forth and described in Exhibit "A", in so far, but only in so far, as said Article 15 applies to Seller's interest in the gas produced from the premises covered by each of said Gas Purchase Contracts, shall be and is hereby changed and amended to thereafter read as follows:

"15. This agreement shall continue and remain in full force and effect for a period of ten (10) years from January 26, 1949, and shall continue in force and effect thereafter for successive periods of one year each; provided, however, that either party hereto may terminate this agreement at



the end of the original term or any succeeding annual period by giving to the other party at least ninety (90) days' prior written notice of the intention of the party giving such notice to terminate this agreement."

Except as herein specifically changed and amended, said Gas Purchase Contracts as heretofore amended shall remain the same and continue in full force and effect in accordance with all their respective terms and provisions, and shall extend to and be binding upon the respective successors and assigns of the parties hereto.

IN WITNESS WHEREOF this agreement has been executed on the date and in the year first hereinabove written.

UNION PRODUCING COMPANY,
By H. R. BENNETT, *Vice President.*
*Seller.*

Attest:
J. H. MIRACLE,
*Secretary.*

UNITED GAS PIPE LINE COMPANY,
By ED PARKES, *Vice President.*
*Buyer.*

Attest:
J. H. MIRACLE,
*Secretary.*

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UNITED GAS PIPE LINE COMPANY
SHREVEPORT, LOUISIANA

December 1, 1954

Re: United Gas Pipe Line Company GPC 2075
Union Producing Company et al.
Bethany Field
Panola County, Texas

Union Producing Company
P. O. Box 1407
Shreveport, Louisiana

Gentlemen:

Please refer to the captioned contract and any previous amendments thereto, under the terms of which we are obligated to reimburse you for a part of the increase in the Texas production tax which you are obligated to pay with respect to the gas delivered to us under such contract from and after September 1, 1954, by virtue of the enactment of House Bill 15, Chapter 2, of the Acts of the First Called Session, Fifty-Third Legislature of the State of Texas. House Bill 15, Chapter 2, of the Acts of the First Called Session, Fifty-Third Legislature of the State of Texas is hereinafter referred to as "House Bill 15."

This letter will evidence our agreement with you that for and in consideration of the mutual benefits accruing and to accrue to you and United Gas Pipe Line Company by virtue of the execution hereof, United Gas Pipe Line Company will, commencing with deliveries of gas from and after 12:01 A. M. on September 1, 1954, reimburse you for all of the increases in Texas production taxes over and above 5.72% of the value of the gas delivered which are lawfully imposed upon and paid by you under the provisions of House Bill 15 with respect to the gas delivered to

us under the captioned contract. It is the intention of the parties hereto that, from and after this agreement becomes effective, the payment and reimbursement of all production taxes on gas delivered under the captioned contract up to 5.72% of the value of the gas delivered shall be in accordance with the terms of the contract as same existed prior to the execution of this agreement, but that production taxes in excess of 5.72% of the value of the gas delivered but not in excess of the rates for the respective periods as set forth in the table below lawfully imposed upon and paid by you under the provisions of House Bill 15 with respect to the gas delivered under the captioned contract shall be reimbursed to you by United Gas Pipe Line Company. Such periods and respective rates are as follows:

| *Period* | *Rate* |
|---|---|
| September 1, 1954 to September 1, 1955 | 9% |
| September 1, 1955 to September 1, 1956 | 8% |
| Thereafter | 7% |



In the event that there are, in addition to the addressee hereof, other parties seller to the captioned contract, this agreement shall not extend to gas delivered by such other parties seller until such other parties seller or their authorized agents execute this agreement or a similar agreement.

Except as herein expressly changed and amended, the captioned contract shall continue and remain in full force and effect in accordance with the respective terms and provisions thereof.

If the foregoing is acceptable to you, please indicate your acceptance in the space provided below and return one of the duplicate originals hereof to use for our file, thus constituting this letter an amendment to the captioned

contract and binding upon us, our respective successors and assigns.

Very truly yours,
UNITED GAS PIPE LINE COMPANY,
ED PARKES, *Vice President.*

Accepted and agreed to:
UNION PRODUCING COMPANY,
By C. L. RAWLINS, *Vice President.*

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**4286**

## AMENDMENT TO GAS PURCHASE CONTRACTS

BETHANY FIELD — CONTRACT NO. 2075

THIS AGREEMENT made and entered into this 13th day of February, 1951, by and between UNION PRODUCING COMPANY, a Delaware corporation, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a Delaware corporation, hereinafter designated as Buyer;

WITNESSETH:

WHEREAS, Seller and Buyer have heretofore entered into certain Gas Purchase Contracts and Amendments thereto, which are set forth and described in Exhibit "A" attached hereto, covering the sale and purchase of merchantable gas produced from the premises covered thereby; and

WHEREAS, by letter agreement dated December 20, 1950, Seller and Buyer agreed to amend each of said Gas Purchase Contracts set forth and described in Exhibit "A", as same have been heretofore amended, in the particulars hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises and of the mutual benefits accruing and to accrue to the parties hereto by virtue of the execution hereof, said parties covenant and agree as follows:

I.

From and after October 1, 1950, Article 2 of each of said Gas Purchase Contracts set forth and described in Exhibit "A" shall be and is hereby changed and amended so that the following new paragraphs shall be



inserted at the end of Article 2:

"All taxes in effect on October 1, 1950, up to the respective rates thereof on said date, imposed on Seller with respect to the gas delivered hereunder, shall not be considered as "new, additional or increased taxes" under the following provisions of this article.

"In the event that any new, additional or increased taxes are thereafter lawfully imposed on and paid by Seller with respect to the gas delivered hereunder, Buyer agrees to reimburse Seller for one-half (½) of any such new, additional or increased taxes so paid by Seller.

"The term 'tax' as used herein shall mean any tax (other than ad valorem, income or excess profits taxes), license, fee or charge now or hereafter levied, assessed or made by any governmental authority on the gas itself or on the act, right or privilege of production, severance, gathering, transportation, handling, sale or delivery of gas which is measured by the volume, value or sales price of the gas in question; provided, however, that the term 'tax' shall not be deemed to include any general franchise tax imposed on corporations on account of their corporate existence or on their right to do business within the State as a foreign corporation."

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II.

From and after October 1, 1950, Article 6 of each of said Gas Purchase Contracts set forth and described in Exhibit "A" shall be and is hereby changed and amended by deleting that portion of said Article 6 commencing with the words, "Buyer shall have the right to maintain such working pressure . . .", and ending with the words, "pounds per square inch gauge".

III.

From and after October 1, 1950, Article 9 of each of said Gas Purchase Contracts set forth and described in Exhibit "A" shall be and is hereby changed and amended so that Article 9 shall thereafter read as follows:

"9. It is recognized that the Fifty-first Legislature of the State of Texas has enacted the Standard Gas Measurement Law (known as House Bill 159) stipulating the basis of measurement for all gas produced in the State of Texas. It is agreed that all gas delivered hereunder shall be measured in accordance with the basis of measurement set forth in said law.

"A 'cubic foot of gas' for the purpose of measurement of the gas delivered by Seller to Buyer hereunder is the amount of gas necessary to fill a cubic foot of space when the gas is at the absolute pressure of fourteen and sixty-five one-hundredths (14.65) pounds per square inch and at a base temperature of sixty

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degrees (60°) Fahrenheit, and the gas volumes shall be computed into such units in the manner described below. Recognizing that the average atmospheric pressure at the point of measurement is approximately

(4289)

fourteen and seven-tenths (14.7) pounds per square inch, it is agreed that, for the purpose of measurement hereunder, the atmospheric pressure shall be assumed to be fourteen and seven-tenths (14.7) pounds per square inch.

"The orifice coefficient for each meter shall be calculated at the above base pressure and base temperature, at a flowing temperateur of sixty (60) degrees Fahrenheit, and for a gas of sixty-hundredths (.60) specific gravity. Pressure taps for orifice meter installations shall be taken from the pipe runs two and one-half internal pipe diameters upstream and eight internal pipe diameters downstream from the face of the orifice plate.

"For the purpose of measurement, the flowing temperature and the specific gravity of the gas delivered hereunder shall be obtained from the applicable valid orders promulgated from time to time by the Railroad Commission of the State of Texas [in the absence of such orders the temperature of the gas shall be assumed to be sixty degrees (60°) Fahrenheit, and the specific gravit yof the gas shall be assumed to be sixty-hundredths (.60)]; provided, however, that Buyer shall have the right at any time

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and from time to time throughout the term hereof to install a recording thermometer and to make periodic spot tests of the specific gravity of the gas with a gas balance, and in such event the average flowing temperature and the specific gravity of the gas obtained from Buyer's determinations shall be used for the purposes of measurement hereunder.

"All orifice meter computations required shall be made in accordance with formulae and tables contained in Metric Metal Works Bulletin E-2 (Revised 1931).

"The volumes of gas as determined in the manner described above shall be adjusted to give effect to the deviation of such gas from Boyle's Law, as follows:

(a) There shall be determined the average pressure (gauge) at which the gas was delivered during the period under consideration;

(b) There shall be selected from the table of multipliers attached hereto and made a part hereof, and identified as Exhibit "B", the multiplier corresponding to the average pressure as determined in (a) above and to the flowing temperature which was used for the purpose of measurement during the period under consideration;

(c) The adjusted volume of gas for the period under consideration shall be the result obtained by multiplying the volume of gas as determined in the manner above set forth by the multiplier determined in (b) above.

"If the Railroad Commission of Texas should at any time disapprove the multipliers set out in said Exhibit "B" or if at any

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time the composition of the gas delivered to Buyer hereunder shall be materially changed so that the multipliers set out in Exhibit "B" are no longer reasonable, either party may call for a review of such multipliers. In such event the parties shall agree upon the multipliers to be used thereafter. Such new multipliers shall be subject to the approval of the Railroad Commission of Texas, if such Commission at that time has jurisdiction over such matters."

IV.

From and after October 1, 1950, Article 10 of each of said Gas Purchase Contracts set forth and described in Exhibit

"A" shall be and is hereby changed and amended so that said Article 10 shall thereafter read as follows:

"10. The price to be paid by Buyer to Seller for each one thousand (1,000) cubic feet of gas sold and delivered to Buyer hereunder shall be as follows:

(a) During the period hereof from October 1, 1950 to January 1, 1952, seven cents (7¢);

(b) During the next succeeding five-year period after the expiration of the period set forth in (a) above, eight and one-half cents (8½¢);

(c) During the next succeeding five-year period after the expiration of the period set forth in (b) above, nine and one-half cents (9½¢);

(d) During the next succeeding five-year period



after the expiration of the period set forth in (c) above, ten and three-fourths cents (10¾¢); and

(e) During the next succeeding five-year period after the expiration of the period set forth in (d) above, eleven and three-fourths cents (11¾¢)."

V.

From and after October 1, 1950, Article 15 of each of said Gas Purchase Contracts set forth and described in Exhibit "A" shall be and is hereby changed and amended so that said Article 15 shall thereafter read as follows:

"15. This agreement shall continue and remain in full force and effect until January 1, 1972."

VI.

Except as herein specifically changed and amended, said Gas Purchase Contracts, as heretofore amended, shall remain the same and continue in full force and effect in accordance with all their respective terms and provisions, and shall extend to and be binding upon the respective successors and assigns of the parties hereto.

VII.

From and after the date of execution hereof, the aforesaid letter agreement of December 20, 1950, between Buyer and Seller, shall be and is hereby canceled and superseded by this agreement insofar as said letter agreement pertains to the Gas Purchase Contracts described in



said Exhibit "A".

IN WITNESS WHEREOF, this agreement has been executed on the date first hereinabove set forth.

UNION PRODUCING COMPANY,
By H. R. BENNETT, *Vice President.*
*Seller.*

ATTEST:
J. H. MIRACLE,
*Secretary.*

UNITED GAS PIPE LINE COMPANY,
By ED PARKES, *Vice President.*
*Buyer.*

ATTEST:
J. H. MIRACLE,
*Secretary.*

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STATE OF LOUISIANA,
*Parish of Caddo*

BEFORE ME, the undersigned, a Notary Public in and for said Parish and State, on this day personally appeared H. R. Bennett, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said UNION PRODUCING COMPANY, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 14th day of February, A. D. 1951.

FRANCES EMMER,
*Notary Public in and for*
*Caddo Parish, Louisiana.*

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STATE OF LOUISIANA,
*Parish of Caddo*

BEFORE ME, the undersigned, a Notary Public in and for said Parish and State, on this day personally appeared Ed Parkes, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said UNITED GAS PIPE LINE COMPANY, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 14th day of February, A. D. 1951.

FRANCES EMMER,
*Notary Public in and for*
*Caddo Parish, Louisiana.*

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EXHIBIT "A"

1. Gas Purchase Contract and Recording Supplement thereto between Buyer and Seller, executed on May 4, 1942, which said Recording Supplement is recorded in Volume 141, Page 294, of the Deed Records of Panola County, Texas; Amendment to Gas Purchase Contract between Buyer and Seller, executed on February 15, 1949 (T. C. Adams Unit).

2. Gas Purchase Contract, Recording Supplement and Amendment thereto between Buyer and Seller, said Gas Purchase Contract and Recording Supplement having been executed by Seller on December 2, 1947, and by Buyer on December 17, 1947, which said Recording Supplement is recorded in Volume 264, Page 565, of the Deed Records of Panola County, Texas; Amendment to Gas Purchase Contract and Recording Supplement executed by Seller on April 26, 1948, and Buyer on April 27, 1948, recorded in Volume 267, Page 1, of the Deed Records of Panola County, Texas; Amendment to Gas Purchase Contract between Buyer and Seller, executed on February 15, 1949 (J. M. Jernigan Unit).

3. Gas Purchase Contract and Recording Supplement thereto between Buyer and Seller, executed September 26, 1947, which said Recording Supplement is recorded in Volume 128, Page 391 of the Deed Records, Panola County, Texas; Amendment to Gas Purchase Contract between Buyer and Seller, executed on February 15, 1949 (Steele Unit).

4. Gas Purchase Contract and Recording Supplement thereto between Buyer and Seller, executed on September 26, 1937, which said Recording Supplement is recorded in Volume 231, Page 54 of the Harrison County Records;

Amendment to Gas Purchase Contract between Buyer and Seller, executed on July 1, 1949 (Laverne Karslake et al).

5. Gas Purchase Contract and Recording Supplement thereto between Buyer and Seller, executed on September 26, 1937, which said Recording Supplement is recorded in Volume 231, Page 51 of the Harrison County Records; Amendment to Gas Purchase Contract between Buyer and Seller, executed on July 1, 1949 (Jno. S. Bryson).

[redacted]

Average Temperature - °F

| Average Pressure Psig | 40-44 | 45-49 | 50-54 | 55-59 | 60-64 | 65-69 | 70-74 | 75-79 | 80-84 | 85-89 | 90-94 | 95-99 | 100-104 | 105-109 | 110-114 | 115-119 | 120-124 | 125-129 | 130-134 | 135-139 | 140-144 | 145-149 | Average Pressure Psig |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 0-49 | 1.006 | 1.004 | 1.004 | 1.003 | 1.003 | 1.003 | 1.003 | 1.003 | 1.003 | 1.003 | 1.003 | 1.003 | 1.002 | 1.002 | 1.002 | 1.002 | 1.002 | 1.002 | 1.002 | 1.002 | 1.002 | 1.002 | 0-49 |
| 50-99 | 1.009 | 1.009 | 1.009 | 1.008 | 1.008 | 1.008 | 1.008 | 1.007 | 1.007 | 1.007 | 1.007 | 1.006 | 1.006 | 1.006 | 1.006 | 1.006 | 1.006 | 1.006 | 1.006 | 1.006 | 1.006 | 1.006 | 50-99 |
| 100-149 | 1.014 | 1.014 | 1.013 | 1.013 | 1.012 | 1.012 | 1.012 | 1.011 | 1.011 | 1.010 | 1.010 | 1.010 | 1.009 | 1.009 | 1.009 | 1.008 | 1.008 | 1.008 | 1.008 | 1.007 | 1.007 | 1.007 | 100-149 |
| 150-199 | 1.018 | 1.018 | 1.017 | 1.017 | 1.016 | 1.016 | 1.016 | 1.016 | 1.014 | 1.014 | 1.014 | 1.013 | 1.013 | 1.012 | 1.012 | 1.011 | 1.011 | 1.011 | 1.010 | 1.010 | 1.010 | 1.009 | 150-199 |
| 200-249 | 1.024 | 1.023 | 1.022 | 1.022 | 1.021 | 1.020 | 1.020 | 1.019 | 1.018 | 1.018 | 1.017 | 1.017 | 1.016 | 1.016 | 1.016 | 1.014 | 1.014 | 1.013 | 1.013 | 1.012 | 1.012 | 1.011 | 200-249 |
| 250-299 | 1.029 | 1.028 | 1.027 | 1.026 | 1.025 | 1.024 | 1.024 | 1.023 | 1.022 | 1.021 | 1.021 | 1.020 | 1.019 | 1.019 | 1.018 | 1.017 | 1.016 | 1.016 | 1.015 | 1.015 | 1.015 | 1.014 | 250-299 |
| 300-349 | 1.034 | 1.033 | 1.032 | 1.031 | 1.030 | 1.029 | 1.028 | 1.027 | 1.026 | 1.025 | 1.024 | 1.024 | 1.023 | 1.022 | 1.021 | 1.020 | 1.020 | 1.019 | 1.018 | 1.017 | 1.017 | 1.016 | 300-349 |
| 350-399 | 1.038 | 1.038 | 1.036 | 1.036 | 1.034 | 1.033 | 1.032 | 1.031 | 1.030 | 1.029 | 1.028 | 1.027 | 1.026 | 1.025 | 1.024 | 1.023 | 1.022 | 1.021 | 1.021 | 1.020 | 1.019 | 1.019 | 350-399 |
| 400-449 | 1.044 | 1.043 | 1.041 | 1.040 | 1.039 | 1.038 | 1.038 | 1.036 | 1.034 | 1.033 | 1.032 | 1.031 | 1.030 | 1.029 | 1.028 | 1.027 | 1.026 | 1.025 | 1.024 | 1.023 | 1.022 | 1.021 | 400-449 |
| 450-499 | 1.050 | 1.048 | 1.046 | 1.045 | 1.043 | 1.042 | 1.040 | 1.039 | 1.038 | 1.038 | 1.036 | 1.034 | 1.033 | 1.031 | 1.030 | 1.029 | 1.028 | 1.027 | 1.027 | 1.026 | 1.025 | 1.024 | 450-499 |
| 500-549 | 1.056 | 1.053 | 1.051 | 1.049 | 1.048 | 1.046 | 1.046 | 1.043 | 1.041 | 1.040 | 1.039 | 1.037 | 1.036 | 1.036 | 1.033 | 1.032 | 1.031 | 1.030 | 1.029 | 1.028 | 1.027 | 1.026 | 500-549 |
| 550-599 | 1.060 | 1.059 | 1.056 | 1.054 | 1.052 | 1.051 | 1.049 | 1.047 | 1.045 | 1.044 | 1.042 | 1.040 | 1.039 | 1.038 | 1.036 | 1.035 | 1.033 | 1.032 | 1.031 | 1.030 | 1.029 | 1.028 | 550-599 |
| 600-649 | 1.066 | 1.064 | 1.062 | 1.059 | 1.057 | 1.056 | 1.053 | 1.052 | 1.049 | 1.048 | 1.046 | 1.044 | 1.042 | 1.041 | 1.039 | 1.038 | 1.036 | 1.035 | 1.034 | 1.033 | 1.031 | 1.030 | 600-649 |
| 650-699 | 1.072 | 1.069 | 1.067 | 1.064 | 1.062 | 1.059 | 1.057 | 1.055 | 1.052 | 1.050 | 1.048 | 1.046 | 1.044 | 1.043 | 1.041 | 1.040 | 1.038 | 1.036 | 1.035 | 1.034 | 1.033 | 1.031 | 650-699 |
| 700-749 | 1.077 | 1.075 | 1.072 | 1.069 | 1.067 | 1.064 | 1.061 | 1.059 | 1.057 | 1.055 | 1.053 | 1.051 | 1.049 | 1.047 | 1.046 | 1.044 | 1.042 | 1.041 | 1.039 | 1.038 | 1.036 | 1.035 | 700-749 |
| 750-799 | 1.083 | 1.080 | 1.077 | 1.074 | 1.071 | 1.069 | 1.066 | 1.063 | 1.061 | 1.059 | 1.056 | 1.054 | 1.052 | 1.050 | 1.049 | 1.047 | 1.046 | 1.043 | 1.041 | 1.040 | 1.039 | 1.037 | 750-799 |
| 800-849 | 1.089 | 1.085 | 1.082 | 1.079 | 1.076 | 1.072 | 1.070 | 1.067 | 1.064 | 1.062 | 1.060 | 1.058 | 1.056 | 1.054 | 1.052 | 1.050 | 1.048 | 1.046 | 1.044 | 1.043 | 1.041 | 1.040 | 800-849 |
| 850-899 | 1.094 | 1.090 | 1.087 | 1.083 | 1.080 | 1.077 | 1.074 | 1.071 | 1.068 | 1.066 | 1.063 | 1.061 | 1.059 | 1.057 | 1.055 | 1.053 | 1.051 | 1.049 | 1.047 | 1.045 | 1.044 | 1.042 | 850-899 |
| 900-949 | 1.100 | 1.096 | 1.092 | 1.088 | 1.084 | 1.081 | 1.078 | 1.075 | 1.072 | 1.069 | 1.066 | 1.064 | 1.062 | 1.060 | 1.058 | 1.055 | 1.053 | 1.051 | 1.049 | 1.047 | 1.046 | 1.044 | 900-949 |
| 950-999 | 1.106 | 1.101 | 1.097 | 1.092 | 1.089 | 1.085 | 1.082 | 1.078 | 1.075 | 1.073 | 1.070 | 1.067 | 1.065 | 1.063 | 1.061 | 1.059 | 1.056 | 1.054 | 1.052 | 1.050 | 1.048 | 1.046 | 950-999 |
| 1000-1049 | 1.111 | 1.106 | 1.102 | 1.097 | 1.093 | 1.089 | 1.086 | 1.082 | 1.079 | 1.076 | 1.073 | 1.071 | 1.068 | 1.065 | 1.063 | 1.061 | 1.059 | 1.056 | 1.054 | 1.052 | 1.050 | 1.048 | 1000-1049 |
| 1050-1099 | 1.117 | 1.112 | 1.107 | 1.102 | 1.098 | 1.094 | 1.090 | 1.086 | 1.082 | 1.079 | 1.077 | 1.074 | 1.071 | 1.068 | 1.067 | 1.064 | 1.062 | 1.059 | 1.057 | 1.054 | 1.053 | 1.051 | 1050-1099 |
| 1100-1149 | 1.122 | 1.117 | 1.111 | 1.106 | 1.102 | 1.097 | 1.093 | 1.090 | 1.086 | 1.083 | 1.080 | 1.077 | 1.074 | 1.072 | 1.069 | 1.067 | 1.064 | 1.062 | 1.059 | 1.057 | 1.055 | 1.053 | 1100-1149 |
| 1150-1199 | 1.127 | 1.122 | 1.116 | 1.110 | 1.106 | 1.101 | 1.097 | 1.093 | 1.089 | 1.086 | 1.083 | 1.080 | 1.077 | 1.074 | 1.072 | 1.069 | 1.066 | 1.064 | 1.062 | 1.059 | 1.057 | 1.055 | 1150-1199 |
| 1200-1249 | 1.133 | 1.127 | 1.121 | 1.115 | 1.110 | 1.106 | 1.100 | 1.096 | 1.092 | 1.089 | 1.086 | 1.083 | 1.079 | 1.077 | 1.074 | 1.071 | 1.068 | 1.066 | 1.064 | 1.061 | 1.059 | 1.056 | 1200-1249 |
| 1250-1299 | 1.139 | 1.133 | 1.128 | 1.118 | 1.115 | 1.109 | 1.104 | 1.100 | 1.096 | 1.092 | 1.089 | 1.086 | 1.082 | 1.080 | 1.077 | 1.074 | 1.071 | 1.068 | 1.066 | 1.063 | 1.061 | 1.058 | 1250-1299 |
| 1300-1349 | 1.144 | 1.138 | 1.133 | 1.128 | 1.117 | 1.112 | 1.107 | 1.103 | 1.099 | 1.096 | 1.092 | 1.089 | 1.086 | 1.082 | 1.079 | 1.076 | 1.073 | 1.071 | 1.068 | 1.066 | 1.062 | 1.060 | 1300-1349 |
| 1350-1399 | 1.149 | 1.143 | 1.138 | 1.127 | 1.121 | 1.116 | 1.110 | 1.106 | 1.102 | 1.099 | 1.096 | 1.091 | 1.088 | 1.086 | 1.082 | 1.079 | 1.076 | 1.073 | 1.070 | 1.067 | 1.064 | 1.062 | 1350-1399 |
| 1400-1449 | 1.154 | 1.148 | 1.138 | 1.131 | 1.126 | 1.119 | 1.116 | 1.109 | 1.105 | 1.101 | 1.097 | 1.094 | 1.090 | 1.087 | 1.084 | 1.081 | 1.078 | 1.075 | 1.072 | 1.069 | 1.066 | 1.064 | 1400-1449 |
| 1450-1499 | 1.159 | 1.153 | 1.148 | 1.136 | 1.130 | 1.122 | 1.117 | 1.113 | 1.109 | 1.104 | 1.100 | 1.096 | 1.093 | 1.089 | 1.086 | 1.083 | 1.080 | 1.077 | 1.075 | 1.070 | 1.068 | 1.066 | 1450-1499 |

Exhibit "B"
Contract between Union Producing Company and United Gas Pipe Line Company.

Panola County, Texas
Harrison County, Texas

(4297)

8-27-68


| | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 250-299 | 1.029 | 1.028 | 1.027 | 1.026 | 1.025 | 1.024 | 1.024 | 1.023 | 1.022 | 1.021 | 1.021 | 1.020 | 1.019 | 1.019 | 1.018 | 1.017 | 1.016 | 1.016 | 1.015 | 1.015 | 1.015 | 1.014 |
| 300-349 | 1.034 | 1.033 | 1.032 | 1.031 | 1.030 | 1.029 | 1.028 | 1.027 | 1.026 | 1.025 | 1.024 | 1.024 | 1.023 | 1.022 | 1.021 | 1.020 | 1.020 | 1.019 | 1.018 | 1.017 | 1.017 | 1.016 |
| 350-399 | 1.038 | 1.038 | 1.036 | 1.036 | 1.034 | 1.033 | 1.032 | 1.031 | 1.030 | 1.029 | 1.028 | 1.027 | 1.026 | 1.025 | 1.024 | 1.023 | 1.022 | 1.021 | 1.021 | 1.020 | 1.019 | 1.019 |
| 400-449 | 1.044 | 1.043 | 1.041 | 1.040 | 1.039 | 1.038 | 1.038 | 1.036 | 1.034 | 1.033 | 1.032 | 1.031 | 1.030 | 1.029 | 1.028 | 1.027 | 1.026 | 1.025 | 1.024 | 1.023 | 1.022 | 1.021 |
| 450-499 | 1.050 | 1.048 | 1.046 | 1.045 | 1.043 | 1.042 | 1.040 | 1.039 | 1.038 | 1.038 | 1.036 | 1.034 | 1.033 | 1.031 | 1.030 | 1.029 | 1.028 | 1.027 | 1.027 | 1.026 | 1.025 | 1.024 |
| 500-549 | 1.056 | 1.053 | 1.051 | 1.049 | 1.048 | 1.046 | 1.046 | 1.043 | 1.041 | 1.040 | 1.039 | 1.037 | 1.036 | 1.036 | 1.033 | 1.032 | 1.031 | 1.030 | 1.029 | 1.028 | 1.027 | 1.026 |
| 550-599 | 1.060 | 1.059 | 1.056 | 1.054 | 1.052 | 1.051 | 1.049 | 1.047 | 1.045 | 1.044 | 1.042 | 1.040 | 1.039 | 1.038 | 1.036 | 1.035 | 1.033 | 1.032 | 1.031 | 1.030 | 1.029 | 1.028 |
| 600-649 | 1.066 | 1.064 | 1.062 | 1.059 | 1.057 | 1.056 | 1.053 | 1.052 | 1.049 | 1.048 | 1.046 | 1.044 | 1.042 | 1.041 | 1.039 | 1.038 | 1.036 | 1.035 | 1.034 | 1.033 | 1.031 | 1.030 |
| 650-699 | 1.072 | 1.069 | 1.067 | 1.064 | 1.062 | 1.059 | 1.057 | 1.055 | 1.052 | 1.050 | 1.048 | 1.046 | 1.044 | 1.043 | 1.041 | 1.040 | 1.038 | 1.036 | 1.035 | 1.034 | 1.033 | 1.031 |
| 700-749 | 1.077 | 1.075 | 1.072 | 1.069 | 1.067 | 1.064 | 1.061 | 1.059 | 1.057 | 1.055 | 1.053 | 1.051 | 1.049 | 1.047 | 1.046 | 1.044 | 1.042 | 1.041 | 1.039 | 1.038 | 1.036 | 1.035 |
| 750-799 | 1.083 | 1.080 | 1.077 | 1.074 | 1.071 | 1.069 | 1.066 | 1.063 | 1.061 | 1.059 | 1.056 | 1.054 | 1.052 | 1.050 | 1.049 | 1.047 | 1.046 | 1.043 | 1.041 | 1.040 | 1.039 | 1.037 |
| 800-849 | 1.089 | 1.085 | 1.082 | 1.079 | 1.076 | 1.072 | 1.070 | 1.067 | 1.064 | 1.062 | 1.060 | 1.058 | 1.056 | 1.054 | 1.052 | 1.050 | 1.048 | 1.046 | 1.044 | 1.043 | 1.041 | 1.040 |
| 850-899 | 1.094 | 1.090 | 1.087 | 1.083 | 1.080 | 1.077 | 1.074 | 1.071 | 1.068 | 1.066 | 1.063 | 1.061 | 1.059 | 1.057 | 1.055 | 1.053 | 1.051 | 1.049 | 1.047 | 1.045 | 1.044 | 1.042 |
| 900-949 | 1.100 | 1.096 | 1.092 | 1.088 | 1.084 | 1.081 | 1.078 | 1.075 | 1.072 | 1.069 | 1.066 | 1.064 | 1.062 | 1.060 | 1.058 | 1.055 | 1.053 | 1.051 | 1.049 | 1.047 | 1.046 | 1.044 |
| 950-999 | 1.106 | 1.101 | 1.097 | 1.092 | 1.089 | 1.085 | 1.082 | 1.078 | 1.075 | 1.073 | 1.070 | 1.067 | 1.065 | 1.063 | 1.061 | 1.059 | 1.056 | 1.054 | 1.052 | 1.050 | 1.048 | 1.046 |
| 1000-1049 | 1.111 | 1.106 | 1.102 | 1.097 | 1.093 | 1.089 | 1.086 | 1.082 | 1.079 | 1.076 | 1.073 | 1.071 | 1.068 | 1.065 | 1.063 | 1.061 | 1.059 | 1.056 | 1.054 | 1.052 | 1.050 | 1.048 |
| 1050-1099 | 1.117 | 1.112 | 1.107 | 1.102 | 1.098 | 1.094 | 1.090 | 1.086 | 1.082 | 1.079 | 1.077 | 1.074 | 1.071 | 1.068 | 1.067 | 1.064 | 1.062 | 1.059 | 1.057 | 1.054 | 1.053 | 1.051 |
| 1100-1149 | 1.122 | 1.117 | 1.111 | 1.106 | 1.102 | 1.097 | 1.093 | 1.090 | 1.086 | 1.083 | 1.080 | 1.077 | 1.074 | 1.072 | 1.069 | 1.067 | 1.064 | 1.062 | 1.059 | 1.057 | 1.055 | 1.053 |
| 1150-1199 | 1.127 | 1.122 | 1.116 | 1.110 | 1.106 | 1.101 | 1.097 | 1.093 | 1.089 | 1.086 | 1.083 | 1.080 | 1.077 | 1.074 | 1.072 | 1.069 | 1.066 | 1.064 | 1.062 | 1.059 | 1.057 | 1.055 |
| 1200-1249 | 1.133 | 1.127 | 1.121 | 1.115 | 1.110 | 1.106 | 1.100 | 1.096 | 1.092 | 1.089 | 1.086 | 1.083 | 1.079 | 1.077 | 1.074 | 1.071 | 1.068 | 1.066 | 1.064 | 1.061 | 1.059 | 1.056 |
| 1250-1299 | 1.139 | 1.133 | 1.128 | 1.118 | 1.115 | 1.109 | 1.104 | 1.100 | 1.096 | 1.092 | 1.089 | 1.086 | 1.082 | 1.080 | 1.077 | 1.074 | 1.071 | 1.068 | 1.066 | 1.063 | 1.061 | 1.058 |
| 1300-1349 | 1.144 | 1.138 | 1.133 | 1.128 | 1.117 | 1.112 | 1.107 | 1.103 | 1.099 | 1.096 | 1.092 | 1.089 | 1.086 | 1.082 | 1.079 | 1.076 | 1.073 | 1.071 | 1.068 | 1.066 | 1.062 | 1.060 |
| 1350-1399 | 1.149 | 1.143 | 1.138 | 1.127 | 1.121 | 1.116 | 1.110 | 1.106 | 1.102 | 1.099 | 1.096 | 1.091 | 1.088 | 1.086 | 1.082 | 1.079 | 1.076 | 1.073 | 1.070 | 1.067 | 1.064 | 1.062 |
| 1400-1449 | 1.154 | 1.148 | 1.138 | 1.131 | 1.126 | 1.119 | 1.116 | 1.109 | 1.105 | 1.101 | 1.097 | 1.094 | 1.090 | 1.087 | 1.084 | 1.081 | 1.078 | 1.075 | 1.072 | 1.069 | 1.066 | 1.064 |
| 1450-1499 | 1.159 | 1.153 | 1.148 | 1.136 | 1.130 | 1.122 | 1.117 | 1.113 | 1.109 | 1.104 | 1.100 | 1.096 | 1.093 | 1.089 | 1.086 | 1.083 | 1.080 | 1.077 | 1.075 | 1.070 | 1.068 | 1.066 |


8-27-68

(4297)


Exhibit "B"
Contract between Union Producing Company and United Gas Pipe Line Company.

Panola County, Texas
Harrison County, Texas

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# AMENDMENT TO GAS PURCHASE CONTRACTS

BETHANY FIELD CONTRACT No. 2075

THIS AGREEMENT made and entered into this 15th day of February, 1949, by and between UNION PRODUCING COMPANY, a Delaware corporation, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a Delaware corporation, hereinafter designated as Buyer;

WITNESSETH:

WHEREAS, certain Gas Purchase Contracts, and Amendments thereto to which Seller and Buyer are parties, have heretofore been entered into, as set forth and described in Exhibit "A" attached hereto, covering the sale and purchase of gas produced from the premises covered thereby; and

WHEREAS, Seller and Buyer desire that each of said Gas Purchase Contracts set forth and described in Exhibit "A" be amended in the particulars hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises and of the mutual benefits accruing and to accrue to the parties hereto by virtue of the execution hereof, said parties covenant and agree as follows:

1. For a period of five (5) years commencing on January 26, 1949, and for successive periods of one (1) year thereafter during the term of said Gas Purchase Contracts unless this Amendment is terminated in accordance with the provisions hereof, Article 10 of each of said Gas Purchase Contracts set forth and described in Exhibit "A" shall be and is hereby changed and amended to read as follows:

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"10. The price to be paid by Buyer to Seller for each one thousand (1,000) cubic feet of gas sold and delivered to Buyer hereunder shall be five (5) cents."

It is expressly understood and agreed that either party hereto may cancel and terminate this amendment to said

Gas Purchase Contracts at the end of the above mentioned five (5) year period or of any succeeding one (1) year period thereafter by giving to the other party ninety (90) days prior written notice of the intention of the party giving such notice to terminate and cancel this amendment. In the event this amendment is cancelled by either party, in accordance with the provisions hereof, then the price to be paid by Buyer to Seller for each one thousand (1,000) cubic feet of gas sold and delivered to Buyer under said Gas Purchase Contracts, upon the termination of this agreement, shall revert to and be in accordance with the provisions set forth in the aforesaid Gas Purchase Contracts.

Except as herein specifically changed and amended the said Gas Purchase Contracts shall remain the same and shall continue in full force and effect in accordance with all their respective terms and provisions and shall extend to and be binding upon the respective successors and assigns of the parties hereto.

IN WITNESS WHEREOF this agreement has been executed on the day

4300

and in the year first above written.

UNION PRODUCING COMPANY,
By H. R. BENNETT, *Vice President.*
*Seller.*

ATTEST:
J. H. MIRACLE,
*Secretary.*

UNITED GAS PIPE LINE COMPANY,
By ED PARKES, *Vice President.*
*Buyer.*

ATTEST:
J. H. MIRACLE,
*Secretary.*

4301

STATE OF LOUISIANA,
*Parish of Caddo*

BEFORE ME, the undersigned, a Notary Public in and for said Parish and State, on this day personally appeared H. R. Bennett, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said UNION PRODUCING COMPANY, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 25th day of March A. D. 1949.

FRANCES EMMER,
*Notary Public in and for*
*Caddo Parish, Louisiana.*

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STATE OF LOUISIANA,
*Parish of Caddo*

BEFORE ME, the undersigned, a Notary Public in and for said Parish and State, on this day personally appeared Ed Parkes, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said UNITED GAS PIPE LINE COMPANY, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 29th day of March A. D. 1949.

FRANCES EMMER,
*Notary Public in and for*
*Caddo Parish, Louisiana.*

## 4303

### EXHIBIT "A"

1. Gas Purchase Contract and Recording Supplement thereto between Buyer and Seller, executed on May 4, 1942, which said Recording Supplement is recorded in Volume 141, Page 294, of the Deed Records of Panola County, Texas (T. C. Adams Unit).

2. Gas Purchase Contract, Recording Supplement and Amendment thereto between Buyer and Seller, said Gas Purchase Contract and Recording Supplement having been executed by Seller on December 2, 1947, and by Buyer on December 17, 1947, which said Recording Supplement is recorded in Volume 264, Page 565, of the Deed Records of Panola County, Texas; Amendment to Gas Purchase Contract and Recording Supplement executed by Seller on April 26, 1948 and Buyer on April 27, 1948, recorded in Volume 267, Page 1, of the Deed Records of Panola County, Texas (J. M. Jernigan Unit).

3. Gas Purchase Contract and Recording Supplement thereto between Buyer and Seller, executed September 26, 1937, which said Recording Supplement is recorded in Volume 128, Page 391 of the Deed Records, Panola County, Texas (Steele Unit).

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## 4304

### GAS PURCHASE CONTRACT

PANOLA (Bethany) FIELD CONTRACT No. 2075

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a corporation, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter designated as Buyer.

WITNESSETH THAT:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct of Buyer's business and in accordance with the terms and provisions hereof, all merchantable natural gas produced from all wells now drilled or which may hereafter be drilled on the hereinafter described premises during the term of this contract; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of its oil and gas properties located in the field in which said premises are located and such other natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises; said premises being situated in the County of Panola, State of Texas, and being described as follows, to-wit: (Fee 440) Being five hundred and eighty (580) acres, more or less, out of the Ben C. Jordan Survey, fully described in deed dated March 23, 1883, and recorded in Volume Q, Pages 535 to 537 of the Deed Records of Panola County, Texas, and also referred to in lease from Mrs. Corrie C. Steele to Magnolia Petroleum Company, dated July 14, 1916, and recorded in Volume 32, Pages 234 to 236 of the Deed Records of Panola County, Texas, to which reference is here made for all purposes.

Buyer shall not be under any obligation to take all or any specified proportion of the natural gas that can be produced from the above described premises during any defined or specified time, but Buyer shall take natural gas ratably from the above lands in the same proportion that it takes natural gas from the lands and leaseholds of others from whom Buyer is now purchasing and may hereafter purchase natural gas in the gas field in which said premises

of Seller are located. It is recognized and agreed that in taking natural gas ratably Buyer is unable, due to varying operating conditions, to withdraw natural gas in exact ratable proportions during any specific month, but Buyer agrees that it will, to the best of its ability, by balancing excesses against deficiencies during periods of reasonable duration, maintain a ratable proportion of withdrawals from Seller's lands and leaseholds described herein as compared with the withdrawals from the lands and leaseholds of others from whom Buyer is now purchasing and may hereafter purchase natural gas in the gas field in which said premises of Seller are located.

As used herein the term "natural gas" means gas produced in its natural state from a well which, if classified under the laws of, or rulings of the proper regulatory body of, the state in which such well is located, is not classified as an oil well, and, in the absence of any classification under such laws or rulings, such term shall mean gas which is not associated or blended with crude petroleum oil at the time of production from the well; Seller reserving, however, such drip gasoline and distillate as is mechanically separated under normal operating pressures and temperatures in ordinary commercial type separators or drips installed by Seller at or near each well. Such natural gas to be deemed merchantable shall not contain more than thirty (30) grains of sulphur to each one hundred (100) cubic feet of gas nor more than one and one-half (1½) grains of hydrogen sulphide to each one hundred (100) cubic feet of gas and shall be free of objectionable liquids and solids.

2. Seller hereby warrants the title to said natural gas, the right to sell the same and that it is free from all liens and adverse claims, and agrees, if notified thereof by Buyer, to indemnify Buyer against all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of any adverse legal claims of any and all persons to or against said natural gas.

Seller shall, when requested by Buyer, furnish Buyer signed division orders upon regular forms of Buyer, directing the payment to the proper parties of such amounts as may be due for royalties or any other interests in said natural gas, and shall furnish Buyer transfer orders from time to time as required upon the regular forms of Buyer.

Buyer may at Buyer's option pay for Seller all royalties on natural gas delivered hereunder which may accrue under the terms of any lease or leases covering the hereinbefore described premises and may, at its option, pay for Seller all taxes accruing against said premises, and the amounts so paid by Buyer for the account of Seller shall be deducted from the monthly settlement due Seller by Buyer for natural gas purchased hereunder. All taxes levied upon the severance or production of natural gas delivered hereunder shall be due and payable by Seller, but Buyer may, at its option, pay same and deduct the amount thereof from any sums due Seller.

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3. Seller agrees to furnish Buyer complete abstracts showing good and merchantable title in Seller to all natural gas which may be produced from any of the properties hereinabove described before Buyer shall be required to connect to any well or wells or to make settlement for any natural gas purchased hereunder. If Seller fails to furnish said abstracts within thirty (30) days from and after the effective date of this contract, then Buyer may, at its option, procure said abstracts and reimburse itself for the expense thereof out of any moneys due or which may become due Seller from Buyer. Seller further agrees to furnish Buyer with a certified copy of any and all leases affected by this agreement and to maintain said leases in full force and effect during the life of this agreement or during the primary term of said leases, and furnish Buyer with proof of

the payment of all rentals, and the performance of such other obligations as may be set forth in said leases.

4. Seller agrees, at Seller's expense, to complete its wells in a workmanlike manner, and in accordance with the rules and regulations of any regulatory body having jurisdiction.

Seller agrees, at Seller's expense, to keep its wells in good condition, and Seller shall at its own expense install tubing of the proper size, but of not less than one and one-quarter (1¼) inches inside diameter, in each well and shall equip each well with top connections of an approved and standard type. All valves, chokes, fittings, etc., to be used in so equipping each well, shall be in good condition and shall have a rated working pressure sufficiently in excess of the rock pressure of the well to provide a reasonable factor of safety.

In addition to the above equipment to be installed by Seller, Seller agrees, at its expense, to install and properly operate and maintain as a part of the well equipment such drips, separators and other devices as may be necessary to free the natural gas from each well of objectionable liquids and solids prior to its delivery into Buyer's gathering lines, and make such other necessary and reasonable connections or changes in connections as Buyer may require to enable Seller to make delivery of natural gas into Buyer's gathering lines, and to the outlet of said drip, separator or other devices, Seller shall connect a four (4) inch pipe not more than two hundred (200) feet in length equipped with a four (4) inch valve and a four (4) inch flange union, to which the gathering line of Buyer will be connected, and such point of connection shall be the delivery point hereunder. Such installation and equipment shall be subject to the inspection and approval of Buyer.

If Seller fails to properly equip any well on said premises within thirty (30) days from the effective date of this contract, or within thirty (30) days of the completion of any

new well on said premises, then Buyer shall have the option to install drip, separator, and all other necessary devices. Buyer shall at no time be obligated to make such installations required to be made by Seller above, but if Buyer exercises its option to make such installations it shall be deemed to have done so at the express request of Seller, and at Seller's sole expense and risk, and Seller agrees to pay Buyer the full cost of providing and installing all of such equipment, including the cost of labor, drayage and material, plus ten per cent (10%) of the total amount of such cost for overhead, and Buyer may retain the amount due it out of any moneys which may be due or which may become due Seller.

5. At or near the delivery point, Buyer shall install, operate and maintain, at its expense, a measuring station properly equipped with orifice meter or meters of standard type for the measurement of natural gas delivered to Buyer hereunder.

Upon the receipt from Seller of the complete abstracts provided in Article 3 hereof and receipt of notice from Seller that the installation of drips, separators, etc., as provided in Article 4 hereof, has been completed, Buyer shall proceed with and complete with all reasonable dispatch the installation of the necessary lines and measuring stations to connect each well covered by this contract. Buyer shall, unless excused by the provisions of Article 16, complete its installation and begin taking natural gas hereunder within sixty (60) days from the date of receipt of the abstracts or the notice that Seller has completed its installations, whichever date is the later.

6. Buyer shall not be obligated to connect to any well of Seller that is unable to deliver natural gas in commercial quantities (commercial quantities being defined as an amount in excess of five hundred thousand (500,000) cubic feet per day) at a pressure sufficient to enter Buyer's main

pipe lines against the working pressure therein, but Buyer may at its option, at any time during the term of this agreement, connect to such well and take natural gas therefrom.

Buyer shall not be required to continue taking natural gas from any well connected to its lines when such well is unable to deliver natural gas in commercial quantities as above defined, at a pressure sufficient to enter Buyer's main pipe lines against the working pressure in said lines.

Buyer shall have the right to maintain such working pressure in its main pipe lines as it elects, provided such working pressure shall not exceed four hundred seventy-five (475) pounds per square inch gauge.

In the event any or all of the wells to which Buyer is not obligated to connect or from which Buyer is not obligated to continue taking natural gas, under this agreement, be reconditioned or revived by any means either natural or artificial, or be plugged back to a producing horizon or horizons above, or deepened to a producing horizon or horizons below the horizon or horizons in which said well or wells had been completed, then Buyer may at Buyer's option connect to any or all of such wells and take natural gas therefrom hereunder, or resume taking natural gas therefrom hereunder.

7. Buyer shall have the right at Buyer's option, if at any time the natural pressure in any well or wells of Seller located on the above described premises is not sufficient to deliver natural gas in commercial quantities into Buyer's main pipe lines against the working pressures therein, to install field compressors or utilize existing field or main line compressors for the purpose of reducing the working pressure in Buyer's gathering lines to which such well or wells are connected so that the well or wells may deliver natural gas against the reduced working pressure.

It is recognized that Buyer's requirements of natural gas

may fluctuate from time to time and that said compressor stations may not be operated continuously.

In the event Buyer installs field compressors or utilizes existing field or main line compressors, as above provided, then the price to be paid by Buyer to Seller hereunder for all natural gas delivered thereafter from the wells connected to such compressors shall be reduced three-fourths of one cent (¾¢) per thousand cubic feet whether such compressors are operated or not; provided that if it should be necessary for Buyer to install additional compressors or utilize other existing compressors in order for it to make more than one compression of the natural gas, the price to be paid by Buyer to Seller hereunder for all natural gas delivered thereafter from the wells connected to such compressors shall be reduced one and one-half (1½¢) per thousand cubic feet whether such compressors or any part of them are operated or not.

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Buyer's exercise of its option to install compressors or connect said wells to existing compressors shall not place any obligation on Buyer to maintain such installation in place, and Buyer shall have the right at any time, upon thirty (30) days' written notice to Seller, to remove such compressors or disconnect said wells from such compressors.

8. Seller shall have access to the measuring equipment at all reasonable times, but readings, calibrations and adjustments thereof, and changing of charts shall be done by the employees or agents of Buyer. Buyer shall read the meters weekly, or as often as may be necessary, and shall keep said meters accurate and in repair, making such periodical tests as Buyer may deem necessary. Seller shall have the right to challenge the accuracy of said meters, and, when challenged, the meters shall be tested and repaired by

Buyer; the cost of such special test to be borne by Buyer if the percentage of inaccuracy is found to be more than three per cent (3%), but if the percentage of inaccuracy is found to be less than three per cent (3%) the cost of such special test shall be borne by Seller. If said meters are found on any test to be inaccurate more than three per cent (3%), the corrections shall be made for the time said meters have been inaccurate, but in no event to extend back beyond the last date settlement for natural gas was due. The charts and records from such measuring equipment shall remain the property of Buyer. Upon request of Seller, Buyer shall submit to Seller records and charts from its measuring equipment, together with calculations therefrom, for Seller's inspection and verification, subject to return by Seller within twenty (20) days from receipt thereof, after which return the charts and records shall be kept on file by Buyer for a period of one (1) year, after which time they may at Buyer's option be destroyed.

9. A "cubic foot of gas," for the purpose of measurement of the natural gas delivered by Seller to Buyer hereunder, is the amount of gas necessary to fill a cubic foot of space when the gas is at a base pressure of two pounds gauge pressure above 14.7 pounds per square inch atmospheric pressure and at a base temperature of sixty (60) degrees Fahrenheit. The volumes of natural gas delivered hereunder shall be computed into such units in the manner described below. Recognizing that the atmospheric pressure may vary somewhat from time to time and that the average atmospheric pressure is approximately 14.7 pounds per square inch, it is agreed that, for the purpose of measurement and computation, the atmospheric pressure shall be assumed to be 14.7 pounds per square inch, regardless of the actual atmospheric pressure at which the natural gas is delivered and measured. It is likewise agreed that for the purpose of measurement and computation the flow-

ing temperature of the natural gas delivered shall be assumed to be sixty (60) degrees Fahrenheit and the specific gravity of the natural gas delivered shall be assumed to be sixty-hundredths (.60), and no correction shall be made for any variation therefrom in either of these items. It is likewise agreed that the natural gas shall be assumed to obey Boyle's law and no correction shall be made for any variation from this law.

When orifice meters are used for the measurement of natural gas hereunder, the hourly orifice coefficient for each meter shall be calculated at the above base pressure and base temperature, at a flowing temperature of sixty (60) degrees Fahrenheit and for a gas of sixty-hundredths (.60) specific gravity. Pressure taps for meter installation shall be taken from the pipe runs two and one-half (2½) internal diameters upstream and eight (8) internal diameters downstream from the face of the orifice plate.

All orifice meter computations required shall be made in accordance with formulae and tables contained in Metric Metal Works Bulletin E-2.

10. The price per thousand cubic feet to be paid Seller by Buyer for natural gas delivered hereunder shall be as follows: FOUR CENTS (4¢).

11. For the purpose of billing and accounting for natural gas delivered hereunder, the day shall begin at 7:00 o'clock A. M. and extend to 7:00 o'clock A. M. of the following day, and the month (hereinafter called "billing month") shall begin at 7:00 o'clock A. M. on the twenty-sixth day of the calendar month and extend to 7:00 o'clock A. M. on the twenty-sixth day of the following calendar month.

Settlement shall be made by check each calendar month, for all natural gas delivered during the billing month ending during the preceding calendar month.

12. Buyer shall, in so far as Seller is able to convey such rights, have an easement and servitude on said premises for installing, operating and maintaining equipment, with the right to remove the same before or within a reasonable time after the expiration of this contract; shall further have the right to operate, inspect and test measuring equipment; and shall, at all times, have the right to free access to any part of Seller's leasehold for any purpose connected with any matter or thing covered by this contract.

13. No conveyance of any interest or Seller or of Seller's lessor or lessors shall be binding upon Buyer until Buyer has been furnished with written notice thereof, proper division and transfer orders and a certified copy of such transfer or conveyance.

14. This contract is subject to all present and future valid orders, rules and regulations of any regulatory body of the Federal Government or the state in which these premises are situated.

15. This contract shall become effective on September 26, 1937, and shall continue in full force and effect until December 31, 1962; but in case Seller's right to produce natural gas from the above described premises is dependent upon any oil and gas lease or mineral rights, the term hereof shall be limited to the life of such lease or of such mineral rights, including any renewals and extensions thereof, but in no event shall extend beyond December 31, 1962.

16. In the event of either party hereto being rendered unable wholly or in part by force majeuré to carry out its obligations under this agreement, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected

by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

**4307**

17. As between the parties hereto, Seller shall be in control and possession of its natural gas deliverable hereunder and responsible for any damage or injury caused thereby until the same shall have been delivered to Buyer, after which delivery Buyer shall be deemed to be in exclusive control and possession thereof and responsible for any injury or damage caused thereby.

18. All the stipulations, terms and conditions of this contract shall extend to and be binding upon the respective legal representatives, successors and assigns of the parties hereto, and shall constitute a real right and covenant running with the land.

IN WITNESS WHEREOF, this contract has been executed as of the 26th day of September, 1937.

UNION PRODUCING COMPANY,
By R. H. HARGROVE, *Vice-President.*

ATTEST:
A. F. MCCLELLAN, *Assistant Secretary.*

WITNESSES:
LOLITA RODGERS,
HARRIET L. VINCENT.

UNITED GAS PIPE LINE COMPANY,
By M. A. ABERNATHY, *Vice-President.*

ATTEST:
J. H. MIRACLE, *Secretary.*

WITNESSES:
LOLITA RODGERS,
HARRIET L. VINCENT.

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**4830**

**Excerpts From Hearing Exhibit No. 106**

COTTON VALLEY FIELD — CONTRACT NO. 858

THIS AGREEMENT made and entered into this 20th day of July, 1948, by and between COTTON VALLEY OPERATORS COMMITTEE, acting by and through its duly authorized Chairman, for and on behalf of and as agent for all of the Operators under that certain agreement known as "COTTON VALLEY UNITIZATION AND PRESSURE MAINTENANCE AGREEMENT", hereinafter called "Sellers", and UNITED GAS PIPE LINE COMPANY, a corporation of the State of Delaware, authorized to do business in the State of Louisiana, hereinafter called "Buyer";

WITNESSETH:

WHEREAS, by contract dated April 29, 1940, The Ohio Oil Company et al agreed to sell, and Buyer agreed to pur-

chase gas produced from certain lands therein described and referred to, situated in the Cotton Valley Field, Webster Parish, Louisiana; and

WHEREAS, the parties hereto desire to amend said contract of April 29, 1940, in the particulars hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto do hereby enter into the following amendatory agreement.

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**4835**

5.

From and after the effective date hereof, ARTICLE VII of said contract of April 29, 1940 shall be and is hereby charged and amended in the following particulars, to-wit:

(a) The words and figures "three cents (3¢)", now appearing in the next to the last subparagraph of Section (B) of said ARTICLE VII, shall be changed, wherever appearing in said subparagraph, to thereafter read "six cents (6¢)"; and

(ii) All of that portion of ARTICLE VII, commencing with the words "In addition to the above prices for gas * * *" and ending with the last word of said ARTICLE VII, shall be stricken out and eliminated from said ARTICLIE VII.

* * * * * * * * * *

**4837**

8.

This amendatory agreement shall be and is hereby made effective as of June 26, 1948.

Except as herein specifically changed and amended, said contract of April 29, 1940 shall remain the same and continue in full force and



effect as written.

WITNESS THE EXECUTION HEREOF, on the day and year first above written.

COTTON VALLEY OPERATORS COMMITTEE
By J. J. FROMMER, *Chairman*

WITNESSES:
WILDA COURTNEY
HAZEL WELSH

UNITED GAS PIPE LINE COMPANY
By ED PARKES, *Vice President*

ATTEST:
J. H. MIRACLE, *Secretary*

WITNESSES:
C. C. BARNETT
CRYSTAL NICHOLSON

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## GAS PURCHASE CONTRACT

Waskom Field — Contract No. 2094

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a corporation, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter designated as Buyer.

WITHNESSETH THAT:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considera-

tions, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct of Buyer's business and in accordance with the terms and provisions hereof, all merchantable natural gas produced from all wells now drilled or which may hereafter be drilled on the hereinafter described premises during the term of this contract; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of its oil and gas properties located in the field in which said premises are located and such other natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises; said premises being situated in the County of Harrison, State of Texas and being described as follows, to-wit:

(4441) TRACT A: All that certain tract, lot or parcel of land being 4.1 acres of the R. W. Bedford Headright Survey situated in Harrison County, Texas, about 20 miles East from the City of Marshall, Beginning on the West Boundary line of said Bedford Grant 988 vrs. South from the Northwest corner of same it being the South West corner of a tract of land purchased by me from Z. N. Vaughan a double Mulberry Stump Brs N 42¾ E 7.4 vrs and an Ash Brs S 24½ W 2.6 vrs marked XH; Thence East 78 vrs. to a corner in the Middle of the Waskom and Elysian Fields Road; Thence with said road N 8¼ W 201 vrs. N 6 W 240 vrs. N-1¾ W 285 vrs to corner in same; Thence with said road N 8¼ W 201 vrs. N 6 W 240 vrs N 1¾ W 285 vrs. to corner in same; Thence West 20 vrs. to my Northwest corner and east line of a tract of land owned by J. H. and J. S. Bryson; Thence South 1¼ E 723 vrs. to the place of beginning. And containing 571 acres, more or less.

90.7 acres in the T. D. Wilson Survey Abstract 809 being the East 90.7 acres of Block 2 of 260.0 acres awarded to

Harry P. Watson in Partition Judgment in the suit of J. W. George et al vs. H. P. Watson et al, recorded in Vol. 77, pages 190-193, Deed Records, Harrison County, Texas, said 90.7 acres being more particularly described as follows, to-wit: Beginning at the NE corner of said Block 2 at a stake 150.0 varas South from the SE corner of the J. J. Blair 320.0 acre grant from which a hickory brs. N. 64 degs. E 3.7 vrs. and a post oak brs. N. 25 degs. East 7.8 vrs. both marked X; Thence S 556 vrs. to the SE corner of said Block 2; Tenc West along the S line of said Block 2 913.6 vrs. more or less; Thence N. 556 vrs. more or less to a point in the N. line of said Block 2; Thence E. 920.5 vrs more or less to the point of beginning.

TRACT B: 129.4 acres more or less in the Simpson Holloway Grant, the T. D. Wilson Surveys, Abstract Nos. 809 and 811, being more particularly described as follows; to-wit: Beginning at the NW corner of Block 2 awarded to Harry P. Watson in the Partition Judgment in the Suit of J. W. George et al vs. H. P. Watson et al, recorded in Vol. 77, page 193, Deed Records of Harrison County, Texas; Thence E. along the N. line of said Block 2, 1282.2 vrs. more or less to a point; Thence S. 556 vrs. more or less to a point in the S. line of said Block 2; Thence W. 1346.2 vrs. more or less to the SW corner of said Block 2; Thence N. 6.5 degs. E. 560 varas to the place of beginning.

* * * * * * * * — * *

**4965**

10. The price per thousand cubic feet to be paid Seller by Buyer for natural gas delivered hereunder shall be as follows: Four Cents—(4¢)

* * * * * * * * * *

15. This contract shall become effective on September 26, 1937, and shall continue in full force and effect until December 31, 1962; but in case Seller's right to produce

natural gas from the above described premises is dependent upon any oil and gas lease or mineral rights, the term hereof shall be limited to the life of such lease or of such mineral rights, including any renewals and extensions thereof, but in no event shall extend beyond December 31, 1962.

* * * * * * * * * *

**4966**

IN WITNESS WHEREOF, this contract has been executed as of the 26th day of September, 1937.

UNION PRODUCING COMPANY
By R. H. HARGROVE, *Vice-President*

ATTEST:
A. F. MCCLELLAN, *Assistant Secretary*

WITNESSES:
LOLITA RODGERS
HARRIET L. VINCENT

UNITED GAS PIPE LINE COMPANY
By M. A. ABERNATHY, *Vice-President*

ATTEST:
J. H. MIRACLE, *Secretary.*

WITNESSES:
LOLITA RODGERS
HARRIET L. VINCENT

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**4986**

**Excerpts From Hearing Exhibit No. 107**

GAS PURCHASE CONTRACT

JOAQUIN FIELD (Texas) CONTRACT NO. 2540

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a corporation, hereinafter

designated as Seller, and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter designated as Buyer.

WITNESSETH THAT:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient consideration, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct of Buyer's business and in accordance with the terms and provisions hereof, all merchantable natural gas produced from all wells now owned, or which may hereafter be acquired by Seller, subject to and in accordance with the terms and provisions of that certain Working Agreement dated as of June 25, 1940, between Shell Oil Company, Inc., and Union Producing Company, and situated on the hereinafter described premises, during the term of this contract; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of said premises and such other natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises; said premises being situated in the County of Shelby, State of Texas, and being described as follows, to-wit: (20132) The following described land situated in Shelby County on the West bank of Sabine River, being all of the William Moody Survey, and being bounded on the North by lands owned by J. S. Price, on the East by lands owned by J. V. Reed, on the South by lands owned by D. C. Brown and Jeff Culberson, and on the West by land owned by J. W. Dickson, and containing 320 acres, more or less.

* * * * * * * * * *

4988

10. The price per thousand cubic feet to be paid Seller by Buyer for natural gas delivered hereunder shall be as follows: Three Cents (3¢)

* * * * * * * * * * *

15. This contract shall continue in full force and effect until December 31, 1962; but in case Seller's right to produce natural gas from the above described premises is dependent upon any oil and gas lease or mineral rights, the term hereof shall be limited to the life of such lease or of such mineral rights, including any renewals and extensions thereof, but in no event shall extend beyond December 31, 1962.

* * * * * * * * * * *

4989

IN WITNESS WHEREOF, this contract has been executed on this 7th day of November 1940, by Seller, and executed on this 7th day of November, 1940, by Buyer.

UNION PRODUCING COMPANY
By JOHN A. IVY, *Vice-President*

ATTEST:
J. H. MIRACLE, *Secretary*

WITNESSES:
MARJORIE HARTIENS

UNITED GAS PIPE LINE COMPANY
By M. A. ABERNATHY, *Vice-President*

ATTEST:
J. H. MIRACLE, *Secretary*

* * * * * * * * * * *

5045

## GAS PURCHASE CONTRACT

JOAQUIN FIELD (Louisiana) CONTRACT No. 1169

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a Delaware corporation, individually and as operator, hereinafter designated as "Seller," and UNITED GAS PIPE COMPANY, a Delaware corporation, hereinafter designated as "Buyer";

WITNESSTEH:

WHEREAS, the Department of Conservation of the State of Louisiana, by Integration Order No. 28-E-5, dated July 7, 1945, has pooled, unitized, and consolidated into one unit and one tract for the production of gas from the Pettit Zone (Sligo Formation) of the Logansport Field, all the separately owned property interests embraced within all of the South Half of Irregular Section 28 and all of Irregular Section 33, Township 12 North, Range 16 West, DeSoto Parish, Louisiana; and

WHEREAS, the Union Producing Company is the operator of said unit;

NOW, THEREFORE, Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and delivery to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct

5046

of Buyer's business and in accordance with the terms and provisions hereof, all merchantable natural gas produced from all wells now drilled or which may hereafter be drilled on the South Half of Irregular Section 28 and all of Irregular Section 33, Township 12 North, Range 16 West, DeSoto

Parish, Louisiana, during the term of this contract; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of said premises and such other natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises.

* * * * * * * * * *

**5057**

10. The price per thousand cubic feet to be paid Seller by Buyer for gas sold and delivered to Buyer hereunder shall be as follows:

(a) Four cents (4¢) from and after June 26, 1947, for the interest in said gas owned by Seller;

(b) Four cents (4¢) from and after June 26, 1947, for the interest in said gas owned by any other party, which such other party, or Seller as Operator, under proper authorization from such other party, specifically covers by an instrument, entered into on or before June 26, 1948, ratifying and adopting this gas purchase contract for a term of not less than five (5) years;

* * * * * * * * * *

**5059**

15. This contract, insofar as it covers the interest owned by Seller in the gas sold and delivered hereunder, shall continue and remain in full force and effect until December 31, 1962; and insofar as it covers the interests owned by other parties in the gas sold and delivered hereunder, it shall continue and remain in full force and effect until December 31, 1962, or so long as said respective interests remain covered by and subject to this contract, whichever is the shorter period.

* * * * * * * * * *

5062

IN WITNESS WHEREOF, this contract has been executed on this 30th day of March, 1948, by Seller, and executed on this 30th day of March, 1948, by Buyer.

UNION PRODUCING COMPANY,
Individually and as Operator
By H. R. BENNETT, *Vice President*

ATTEST:
B. H. WINHAM, *Asst. Secretary*
*Seller.*

WITNESSES:
L. C. DEAN
J. W. BIBB

UNITED GAS PIPE LINE COMPANY
By ED PARKES, *Vice President*

ATTEST:
B. H. WINHAM, *Asst. Secretary*
*Buyer.*

WITNESSES:
L. C. DEAN
J. W. BIBB

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5146

CARTHAGE FIELD — CONTRACT NO. 2578

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a corporation, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter designated as Buyer;

WITNESSETH:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees

to purchase and receive from Seller, in the usual conduct of Buyer's business and in accordance with the terms and provisions hereof, merchantable natural gas produced from all wells now drilled or which may hereafter be drilled on the lands and leaseholds which Seller owns or shall hereafter own in the Carthage Field, Panola County, Texas, as such field now exists, or as it may hereafter be extended or enlarged, during the term of this contract; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of said premises and such other natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises.

* * * * * * * * * * *

**5157**

10. The price per thousand cubic feet to be paid Seller by Buyer for natural gas delivered hereunder shall be as follows: FOUR CENTS (4¢)

* * * * * * * * * * *

**5166**

16. This agreement shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which deliveries of gas are commenced hereunder, and shall continue in force and effect thereafter for successive periods of one year each; provided, however, that either party hereto may terminate this agreement at the end of the original term or any succeeding annual period by giving to

**5167**

the other party at least ninety (90) days' prior written notice of the intention of the party giving such notice to terminate this agreement.

* * * * * * * * * * *

5169

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective corporate officers thereunto duly authorized on this 13th day of March, 1945.

UNION PRODUCING COMPANY
By N. H. SPEARS, *Vice President*

ATTEST:
GEO. L. FISH
*Asst. Secretary*

*Seller.*

UNITED GAS PIPE LINE COMPANY
By R. H. HARGROVE, *Vice President*

ATTEST:
J. H. MIRACLE
*Secretary*

*Buyer.*

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5239

## GAS PURCHASE CONTRACT

WILLOW SPRINGS FIELD — CONTRACT NO. 2551

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a corporation, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter designated as Buyer.

WITNESSETH THAT:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct of Buyer's business and in accordance with the terms and

provisions hereof, all merchantable natural gas produced from all wells now drilled or which may hereafter be drilled on the hereinafter described premises during the term of this contract; subject, however, to the reservation by Seller of sufficient natural gas for:

(a) The development and operation of Seller's oil and gas properties located in the field in which said premises are located; and

(b) Such natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises; and

(c) The fulfillment of Seller's obligations under that certain contract between Seller and Madaras Steel Corporation of Texas, dated March 15, 1941, and covering the sale by Seller to the Madaras Steel Corporation of Texas for the fuel requirements of its steel plant in the Marshall Mann Survey, Gregg County, Texas;

**5240**

said premises being situated in the County of Gregg, State of Texas, and being described as follows, to-wit:

(20156) A tract of land located about one and one-half miles West of the City of Longview, Texas, being a part of the Marshall Mann Survey;

BEGINNING at the Northeast corner of G. I. Calvin's 130-acre tract;

THENCE North 500 varas or 463 yards a stake R.O. E lvs.

THENCE West 1126 varas stake North 20 West 10⅘ varas;

THENCE South 500 varas to Calvin's Northwest corner and Stewart's Southwest corner;

THENCE East to the starting point, containing 100 acres.

* * * * * * * * * *

**5251**

10. The price per thousand cubic feet to be paid Seller by Buyer for natural gas delivered hereunder shall be as follows: Three Cents (3¢)

* * * * * * * * * *

**5252**

15. This contract shall continue in full force and effect until December 31, 1962; but in case Seller's right to produce natural gas from the above described premises is dependent upon any oil and gas lease or mineral rights, the term hereof shall be limited to the life of such lease or of such mineral rights, including any renewals and extensions thereof, but in no event shall extend beyond December 31, 1962.

* * * * * * * * * *

**5254**

IN WITNESS WHEREOF, this contract has been executed on this 28th day of February, 1942.

UNION PRODUCING COMPANY

By R. H. HARGROVE, *Vice President*

ATTEST:

J. H. MIRACLE, *Secretary*

UNITED GAS PIPE LINE COMPANY

By M. A. ABERNATHY, *Vice President*

ATTEST:

J. H. MIRACLE, *Secretary*

5407

**Excerpts From Hearing Exhibit No. 108**

# GAS PURCHASE CONTRACT

AGUA DULCE FIELD — CONTRACT NO. 2539

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a corporation, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter designated as Buyer.

WINTESSETH THAT:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient consideration, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct of Buyer's business and in accordance with the terms and provisions hereof, all merchantable natural gas produced from all wells now owned, or which may hereafter be acquired by Seller, subject to and in accordance with the terms and provisions of that certain operating agreement of June 5, 1936, between United Production Corporation and Texon Royalty Company, and situated on the hereinafter described premises during the term of this contract; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of said premises and such other natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises; said premises being situated in the County of Nueces, State of Texas, and being described as follows, to-wit: (9690) 232.43 acres, more or less, being all of the following described 275 acres:

• • • • • • • • • • •

5409

10. The price per thousand cubic feet to be paid Seller by Buyer for natural gas delivered hereunder shall be as follows: Three and one-half cents (3½¢)

* * * * * * * * * *

15. This contract shall continue in full force and effect until December 31, 1962; but in case Seller's right to produce natural gas from the above described premises is dependent upon any oil-and gas lease or mineral rights, the term hereof shall be limited to the life of such lease or of such mineral rights, including any renewals and extensions thereof, but in no event shall extend beyond December 31, 1962.

* * * * * * * * * *

5410

IN WITNESS WHEREOF, this contract has been executed on this 26th day of June 1940, by Seller, and executed on this 26th day of June, 1940, by Buyer.

UNION PRODUCING COMPANY
By R. H. HARGROVE, *Vice-President*

ATTEST:
GEO. L. FISH, *Secretary*

WITNESSES:
D. E. MCCRARY
BERT H. WINHAM

UNITED GAS PIPE LINE COMPANY
By M. A. ABERNATHY, *Vice-President*

ATTEST:
GEO. L. FISH, *Secretary*

WITNESSES:
V. E. BENNIST
C. P. O'DOWD

* * * * * * * * * *

6060

**Excerpts From Hearing Exhibit No. 110**

FOX FIELD CONTRACT NO. 2649

UNITED GAS PIPE LINE COMPANY
SHREVEPORT, LOUISIANA
December 1, 1954

Union Producing Company
P. O. Box 1407
Shreveport, Louisiana

Gentlemen:

Please refer to that certain Gas Purchase Contract entered into by and between you, as Seller, and United Gas Pipe Line Company, as Buyer, on September 2, 1952, with regard to the sale and purchase of gas produced from certain lands and leaseholds in the Fox Field, Refugio County, Texas. The Fifty-Third Legislature of the State of Texas enacted House Bill 15, Chapter 2, of the Acts of the First Called Session which provides for certain increases in the Texas production tax. This Bill becomes effective as of September 1, 1954. House Bill 15, Chapter 2, of the Acts of the First Called Session, Fifty-Third Legislature of the State of Texas is hereinafter referred to as "House Bill 15."

By letter agreement dated August 31, 1954, we agreed, commencing with deliveries of gas from and after 12:01 A.M. on September 1, 1954, to reimburse you for all of the increases in Texas production taxes over and above 5.72% of the value of the gas delivered which were lawfully imposed upon and paid by you under the provisions of House Bill 15 with respect to the gas delivered to us under the above described contract, in so far and only in so far as said contract related to the wells described therein. Otherwise, the above described contract only provides that we shall reimburse you for a part of the increase in the Texas

production tax which you are obligated to pay with respect to the gas delivered to us thereunder by virtue of House Bill 15. However, we propose for and in consideration of the mutual benefits accruing to and to accrue to you and United Gas Pipe Line Company by virtue of the execution hereof, that the above described contract be further amended so that we agree, commencing with deliveries of gas from and after 12:01 A.M. on September 1, 1954, to reimburse you for all of the increases in Texas production taxes over and above 5.72% of the value of the gas delivered which are lawfully imposed upon and paid by you under the provisions of House Bill 15 with respect to the gas delivered to us from all other wells covered by the above described contract. It is the intention of the parties hereto, that, from and after this agreement becomes effective, the payment and reimbursement of all production taxes on gas delivered from all other wells covered by the above described contract up to 5.72% of the value of the gas delivered shall be in accordance with the terms of the contract as same existed prior to the execution of this agreement, but that production taxes in excess of 5.72% of the



value of the gas delivered but not in excess of the rates for the respective periods as set forth in the table below lawfully imposed upon and paid by you under the provisions of House Bill 15 with respect to the gas delivered from all other wells covered by the above described contract shall be reimbursed to you by United Gas Pipe Line Company. Such periods and respective rates are as follows:

| *Period* | *Rate* |
|---|---|
| September 1, 1954 to September 1, 1955 .... | 9% |
| September 1, 1955 to September 1, 1956 .... | 8% |
| Thereafter ..... | 7% |

It is expressly understood and agreed that this amendatory agreement shall not in anywise affect or alter the terms and provisions of the above described amendatory agreement of August 31, 1954, which provides for the reimbursement to you of such increases in the Texas production tax lawfully imposed upon and paid by you with respect to the gas delivered to us from the wells described therein.

Except as herein expressly changed and amended, the above described contract shall continue and remain in full force and effect in accordance with the respective terms and provisions thereof.

If the foregoing is acceptable to you, please indicate your acceptance in the space provided below and return one of the duplicate originals hereof to us for our file, thus constituting this letter an amendment to the above described contract and binding upon us, our respective successors and assigns.

Very truly yours,

UNITED GAS PIPE LINE COMPANY
W. D. GREENE, *Vice President.*

Accepted and agreed to:

UNION PRODUCING COMPANY
By E. L. RAWLINS, *Vice President.*

6062

UNITED GAS PIPE LINE COMPANY
SHREVEPORT, LOUISIANA

August 31, 1954

Re: United Gas Pipe Line Company GPC 2649
Union Producing Company
Fox Field
Refugio County, Texas

Union Producing Company
P. O. Box 1407
Shreveport, Louisiana

Gentlemen:

Please refer to the captioned contract and any previous amendment thereto, under the terms of which we are obligated to reimburse you for a part of the increase in the Texas production tax which you will be obligated to pay with respect to the gas delivered to us under such contract from and after September 1, 1954, by virtue of the enactment of House Bill 15, Chapter 2, of the Acts of the First Called Session, Fifty-Third Legislature of the State of Texas. House Bill 15, Chapter 2, of the Acts of the First Called Session, Fifty-Third Legislature of the State of Texas is hereinafter referred to as "House Bill 15."

This letter will evidence our agreement with you that for and in consideration of the mutual benefits accruing and to accrue to you and United Gas Pipe Line Company by virtue of the execution hereof, United Gas Pipe Line Company will, commencing with deliveries of gas from and after 12:01 A.M. on September 1, 1954, reimburse you for all of the increases in Texas production taxes over and above 5.72% of the value of the gas delivered which are lawfully imposed upon and paid by you under the provisions of House Bill 15 with respect to the gas delivered

to us under the captioned contract, insofar and only insofar as such contract relates to the M. F. Lambert Nos. A-10, U-30 and H-31 wells. It is the intention of the parties hereto that, from and after this agreement becomes effective, the payment and reimbursement of all production taxes on gas delivered under the captioned contract up to 5.72% of the value of the gas delivered shall be in accordance with the terms of the contract as same existed prior to the execution of this agreement, but that production taxes in excess of 5.72% of the value of the gas delivered but not in excess of the rates for the respective periods as set forth in the table below lawfully imposed upon and paid by you under the provisions of House Bill 15 with respect to the gas delivered under the captioned contract, insofar and only insofar as such contract relates to the M. F. Lambert Nos. A-10, U-30 and H-31 wells, shall be reimbursed to you by United Gas Pipe Line Company. Such periods and respective rates are as follows:

| *Period* | *Rate* |
|---|---|
| September 1, 1954 to September 1, 1955 .... | 9% |
| September 1, 1955 to September 1, 1956 .... | 8% |
| Thereafter ..... | 7% |

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It is expressly understood and agreed, however, that anything herein to the contrary notwithstanding, either party hereto shall have the right at any time by giving written notice to the other pary to cancel his amendatory agreement with regard to the reimbursement of the above described increases in the Texas production tax on gas delivered from any of the above described wells.

Except as herein expressly changed and amended, the captioned contract shall continue and remain in full force and effect in accordance with the respective terms and provisions thereof.

(6063)

If the foregoing is acceptable to you, please indicate your acceptance in the space provided below and return one of the duplicate originals hereof to us for our file, thus constituting this letter an amendment to the captioned contract and binding upon us, our respective successors and assigns.

Very truly yours,
UNITED GAS PIPE LINE COMPANY
ED PARKES, *Vice President.*

Accepted and agreed to:

UNION PRODUCING COMPANY
By E. L. RAWLINS, *Vice President.*

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**6064**

FOX FIELD CONTRACT NO. 2649

UNITED GAS PIPE LINE COMPANY
SHREVEPORT, LOUISIANA

July 24, 1953

Union Producing Company
P. O. Box 1407
Shreveport, Louisiana

Gentlemen:

United Gas Pipe Line Company is currently purchasing gas from you under the terms of the hereinafter described Gas Purchase Contracts from certain lands and leaseholds in Refugio County, Texas, and is having part of the gas processed in the gasoline plant in the Refugio Field now operated by Reiter-Foster Oil Corporation. Such contracts are United Gas Pipe Line Company's Gas Purchase Contracts Numbers 2619, 2635, 2649 and 2650. Under United Gas Pipe Line Company's present arrangements with Reiter-Foster Oil Corporation, United Gas Pipe Line Company has been passing on to you all the gasoline

royalty received on the gasoline extracted from the gas delivered by you under the above described contracts. Our Mr. C. C. Barnett did, however, notify you in his letter of June 24, 1953, that effective August 1, 1953, we would discontinue having gas received from you under the terms of the above described contracts processed by Reiter-Foster Oil Corporation and that after that date, you would no longer receive the gasoline royalty you had received in the past.

We wish to advise that since such time Reiter-Foster Oil Corporation has offered us a new proposal, effective August 1, 1953, for the processing of gas received from you and other parties. Under such new proposal Reiter-Foster Oil Corporation shall charge four percent (4%) of the quantity of gas received from us for processing to compensate for the quantity of gas lost by fuel and shrinkage incident to the processing of such gas. Consequently, commencing on August 1, 1953, there shall be deducted from the royalty to be received by you four percent (4%) of the value of your proportionate part of the gas which we have processed in Reiter-Foster Oil Corporation's gasoline plant.

It is expressly understood and agreed that nothing in this letter agreement shall be construed so as to alter or modify the terms and provisions of the above described contracts or any amendment thereto, except as to the manner of payment of the gasoline royalty as provided herein; it being understood that we shall have the right at any time to discontinue having your gas processed.

**6065**

The above is in accordance with our Mr. C. C. Barnett's recent discussion with you in regard to this matter and we would appreciate your indicating your acceptance in the space provided below and returning one of the quintuple originals hereof to us for our file, thus constituting

this letter an amendment to each of the above described Gas Purchase Contracts.

Very truly yours,

UNITED GAS PIPE LINE COMPANY
ED PARKES, *Vice President.*

Accepted and agreed to:

UNION PRODUCING COMPANY
By H. R. BENNETT, *Vice President.*

**6066**

FOX FIELD CONTRACT NO. 2649

## GAS PURCHASE CONTRACT

THIS CONTRACT made and entered into this 2nd day of September, 1952 by and between UNION PRODUCING COMPANY, a corporation, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter referred to as Buyer;

WITNESSETH:

1. Seller, in consideration of the sum of Ten and No/100 ($10.00) Dollars and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, at the delivery points hereinafter set forth, in the usual conduct of Buyer's business and in accordance with the terms and provisions hereof, merchantable natural gas in the quantities hereinafter set forth, produced from all wells now drilled or which may hereafter be drilled on all lands and leaseholds jointly owned with others in the Fox Field, Refugio County, Texas, as such field now exists or as it may hereafter be extended or enlarged during the term of this contract, and Seller's proportionate part of all merchantable natural gas produced from unitized or pooled

lands and leaseholds in said field, in which Seller has or shall hereafter acquire an interest; subject, however, to the reservation by Seller of sufficient natural gas for:

1. the development and operation of said lands and leaseholds;

6067

2. the operation of any gasoline, compressor, dehydration or similar plant owned by Seller and/or its associates in or in the vicinity of said Fox Field; and

3. for the supplying to Seller's lessors of natural gas to which such lessors are entitled under the terms of Seller's leaseholds covered by this agreement.

Seller shall have the right to produce gas from wells on lands covered by this agreement and return such gas to the formation from which it was produced or to any other formation under the lands covered by this agreement either before or after extracting or causing to be extracted from said gas any or all liquefiable hydrocarbons capable of extraction, absorption or separation from such gas and contained and produced with said gas; provided that in the exercise of such right, Seller does not in any way interfere with Buyer's right at any time and from time to time during the term hereof to take gas from said wells in the quantities hereinafter provided for.

Buyer shall have the right and privilege from time to time, at any time during the term of this agreement, of purchasing, subject to the reservations above set forth, all of the natural gas which can be produced from the lands and leaseholds covered hereby; however, Buyer shall not be under any obligation to take all or any specified proportion of the natural gas that can be produced from the aforesaid premises during any defined or specified time.

(6067)

Subject to the ability of the lands and leaseholds covered hereby to produce such quantities, Buyer shall take natural gas ratably from the above lands and leaseholds in the same proportion that it takes natural gas from the lands and leaseholds of others from whom Buyer is now purchasing

6068

and may hereafter purchase natural gas in the field in which said premises of Seller are located. It is recognized and agreed that in taking natural gas ratably Buyer is unable, due to varying operating conditions, to withdraw natural gas in exact ratable proportions during any specific month, but Buyer agrees that it will, to the best of its ability, by balancing excesses against deficiencies during periods of reasonable duration, maintain a ratable proportion of withdrawals from Seller's lands and leaseholds as compared with the withdrawals from the lands and leaseholds of others from whom Buyer is now purchasing and may hereafter purchase natural gas in the field in which said premises of Seller are located.

Seller shall have the right to sell, utilize or dispose of any surplus natural gas which Buyer is not purchasing from time to time, provided that any arrangement for the sale, utilization, or disposition of such surplus natural gas shall be subject to Buyer's prior right to take from Seller hereunder at any time and from time to time any quantities of natural gas up to the maximum quantity which can be transported and delivered through Buyer's pipe line facilities for the transportation of gas from the delivery points hereunder as such facilities may exist from time to time.

2. Buyer is, at the present time, enlarging its pipe line facilities for the withdrawal of gas from various fields in the producing area South and West of Houston, Texas,

which enlargement will permit the marketing of increased quantities of gas from the area including the Fox Field. Buyer agrees to proceed with reasonable diligence in the completion of such facilities.

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Seller recognizes that Buyer is entering into this contract for the purpose of obtaining an additional supply of gas for the requirements of its general pipe line system in the area, as presently existing, and as enlarged by such additional facilities. It is agreed by the parties hereto that if, at any time and from time to time, Seller's development of its said properties in said fields should not be adequate at such time, to supply Buyer's requirements of gas hereunder, Buyer shall have the right to so notify Seller, and Seller agrees to thereupon proceed with the development of the lands and leaseholds covered hereby in a reasonable and orderly manner for the production of natural gas to the same extent that a reasonable and prudent operator would do, in accordance with good operating and conservation practices under the same or similar circumstances, to the end that, if feasible and practicable, Seller will have available for Buyer reasonable additional quantities of natural gas delivery capacity.

Seller reserves the exclusive right to abandon, deepen, work over, or conduct any other operations deemed necessary by Seller on any and all wells and Seller shall have the right to operate all wells in such manner as in Seller's judgment constitutes proper production practices. Nothing in this agreement shall obligate Seller to produce any well in violation of any rule, regulation or order of the Railroad Commission of Texas or any other governmental body having jurisdiction, or to operate any well in a manner which in the judgment of Seller would cause waste or damage to the reservoir from which said gas is produced.

It is understood and agreed that Seller shall have the

right from time to time to alter any unit which includes any part of the lands and leaseholds covered hereby in any manner deemed necessary by Seller.

6070

3. As used herein, the term "natural gas" means gas produced in its natural state from a well which, if classified under the laws of, or rulings of the proper regulatory body of, the state in which such well is located, is not classified as an oil well, and, in the absence of any classification under such laws or rulings, such term shall mean gas which is not associated or blended with crude petroleum oil at the time of production from the well; except that Seller shall separate or cause to be separated any liquid hydrocarbons and may extract, or cause to be extracted, any natural gasoline or other liquefiable hydrocarbons which may be produced with or as a part of such gas, provided that by such separation or extraction the determined heating value of the gas shall not be reduced to less than nine hundred fifty (950) gross British thermal units per cubic foot, determined at thirty inches (30") of mercury, sixty degrees (60°) Fahrenheit, and saturated with water vapor. Seller agrees that it will not subject or permit said gas to be subjected to any treatment in such extraction or separation processes which will change the chemical composition of any of the component parts of said gas, permit or cause the admission of oxygen, or which will dilute said gas. Seller agrees that the gas delivered hereunder shall be merchantable gas and shall be free of objectionable liquids and solids. No gas shall be delivered hereunder except at Buyer's option, as hereinafter in this Article set forth, containing in excess of:

1. Twenty (20) grains of total sulphur per thousand (1,000) cubic feet;

2. Ten (10) grains of hydrogen sulphide per thousand (1,000) cubic feet;

3. Eleven hundred fifty (1150) gross British thermal units per cubic foot, determined at thirty (30) inches of mercury, sixty degrees (60°) Fahrenheit, and saturated with water vapor;

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4. One per cent (1%) by volume of oxygen;

5. Two per cent (2%) by volume of carbon dioxide;

6. Two-tenths (0.2) gallon of liquefiable hydrocarbons, except gas delivered in accordance with the provisions of Article 21 of this Contract which may contain four-tenths (0.4) gallon of liquefiable hydrocarbons, (Commonly referred to as natural gasoline) per thousand cubic feet, as determined by the charcoal absorption method as prescribed by the American Gas Association in its Testing Code No. 101, effective January 1, 1933.

In the event Seller should tender to Buyer hereunder gas which does not meet the quality specifications contained in subparagraphs 1 through 6 above, Buyer may reject such gas or in the event it accepts a portion of such gas, may thereafter reject future deliveries of such gas and require Seller to exclude from delivery hereunder the gas from any well or wells which causes the gas tendered to fall below said quality specifications. Buyer's right to reject future deliveries of such gas which fails to meet said quality specifications may be exercised from time to time and acceptance by Buyer of a portion of such gas shall not waive its right thereafter to reject future deliveries thereof and require Seller to exclude from delivery hereunder the gas from any well or wells which causes the gas tendered to fall below said quality specifica-

tions. If Buyer should, as provided above, reject any gas either at the time it is first tendered by Seller or if further deliveries thereof are rejected at a later date, Seller shall then have the right to sell or dispose of said gas to parties other than Buyer; provided, however, that in the event Seller should at any time process such gas so that the same does meet said quality specifications, Buyer shall have the option to take such gas hereunder.

4. Seller hereby warrants the title to said gas, the right to sell the same and that it is free from all liens and adverse claims, and agrees,



if notified thereof by Buyer, to indemnify Buyer against all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of any adverse legal claims of any and all persons to or against said natural gas.

Seller agrees to pay or cause to be paid to the parties entitled thereto, all royalties, overriding royalties and all other like charges on the gas delivered hereunder.

5. All taxes and assessments imposed upon Seller with respect to the gas delivered hereunder prior to its delivery to Buyer shall be due and payable by Seller. Buyer agrees to pay or cause to be paid all taxes and assessments imposed upon Buyer with respect to the gas delivered hereunder after its receipt by Buyer. Neither party shall be responsible or liable for any taxes or other statutory charges levied or assessed against any of the facilities of the other party used for the purpose of carrying out the provisions of this contract.

All taxes which were in effect on January 1, 1950, up to the respective rates thereof in effect on said date, imposed on the parties hereto with respect to the gas delivered hereunder shall not be considered as "new, additional or

increased taxes" under the following provisions of this Article.

In the event any new, additional or increased taxes are thereafter lawfully imposed on and paid by Seller, with respect to the gas delivered hereunder, Buyer agrees to reimburse Seller for one-half (½) the amount of any such new, additional or increased taxes so paid by Seller, or which Seller under contractual or legal obligation pays to the person or company on which such taxes are levied.

The term "tax" as used herein shal mean any tax (other than ad valorem, income or excess profits taxes), license, fee or charge now or



hereafter levied, assessed or made by any governmental authority on the gas itself or on the act, right or privilege of production, severance, gathering, transportation, handling, sale or delivery of gas which is measured by the volume, value or sales price of the gas in question; provided, however, that the term "tax" shall not be deemed to include any general franchise tax imposed on corporations on account of their corporate existence or on their right to do business within the state as a foreign corporation.

6. Seller agrees, at Seller's expense, to complete its wells in a workmanlike manner, and in accordance with the rules and regulations of any regulatory body having jurisdiction.

Seller agrees, at Seller's expense, to keep its wells in good condition, and to install, operate and maintain as part of the well equipment such drips, separators, and other devices as are necessary to free the gas from each well of objectionable liquids and solids prior to its delivery into Buyer's lines.

Seller agrees to deliver and Buyer agrees to receive the gas deliverable hereunder at a point near the outlet of the

separator near each well covered hereby, each of which such points shall constitute a delivery point hereunder.

Buyer agrees to provide the necessary gathering system to enable it to receive gas at each of the above described delivery points. Seller recognizes that such gathering system may be used by Buyer for transporting gas received by Buyer from other parties. It is recognized that, as hereinabove mentioned, Buyer is presently constructing new main transmission facilities which will serve the Fox Field. Buyer agrees that said gathering system,



as originally constructed and as it may from time to time be increased or replaced, shall at all times have such capacity as to be in reasonable proportion to the capacity of the remainder of the Buyer's facilities for transporting and marketing gas from the Fox Field.

Deliveries of gas hereunder shall commence as of the effective date hereof.

7. Subject to the provisions of Article 21 of this contract, Seller agrees to deliver the gas deliverable hereunder at such pressures as Buyer may desire from time to time but not in excess of the natural pressure of such wells, not in excess of a pressure required to enable Buyer to deliver such gas into its main transmission lines at a pressure not in excess of 800 pounds per square inch gauge; provided, however, that if at any time the natural pressure of any such well or wells is not sufficient to enable Buyer to deliver such gas at the pressures above provided, then Buyer shall have the right, at its option, to provide compression facilities and charge Seller for the compression of such gas in accordance with the provisions of Article 9 hereof.

8. Buyer shall not be obligated to connect to any well subject to this agreement or to continue taking gas from

any such well when such well is unable to deliver gas in quantities in excess of five hundred thousand (500,000) cubic feet per day at a pressure sufficient to enter Buyer's pipe line against the working pressure maintained therein from time to time (up to the maximum pressures provided in Article 7 hereof).

In the event any or all of the wells to which Buyer is not obligated to connect or from which Buyer is not obligated to continue taking gas under this agreement be reconditioned by any means, either natural or artificial,



or be plugged back to a producing horizon or horizons above, or deepened to a producing horizon or horizons below the horizon or horizons in which said well or wells had been completed, then in that event, such well or wells shall be subject to the terms of this agreement.

9. Subject to the provisions of Article 21 of this contract, in the event the natural pressure of the gas to be delivered hereunder is not sufficient to deliver such gas at the outlet of the gathering system and appurtenant facilities at such pressure as Buyer may, from time, to time require but not in excess of eight hundred (800) pounds per square inch gauge it may become necessary for Buyer to compress, or have compressed, the gas delivered from some or all of the wells covered hereby, so as to enable such gas to be delivered at the outlet of the aforesaid gathering system and any appurtenant facilities thereto at such pressures as Buyer may from time to time require but not in excess of eight hundred (800) pounds per square inch gauge and it is further recognized that since Buyer's requirements for gas may fluctuate from time to time, any compressors utilized for compressing gas delivered hereunder may not be operated continuously.

Accordingly, in the event that it is necessary for Buyer to

compress or have compressed the gas delivered from any well or wells covered hereby so that such gas can be delivered at the above mentioned pressures, the price to be paid by Buyer to Seller hereunder for all gas delivered thereafter from such well or wells while



connected to such compressors shall be reduced one cent (1¢) per thousand (1,000) cubic feet even though such compressors may not be operated continuously; provided that if it should be necessary for Buyer to make, or have made, more than one compression of such gas so as to enable such gas to be delivered in accordance with the foregoing, the price to be paid by Buyer to Seller for all gas delivered thereafter from such well or wells while connected to such compressors shall be reduced two cents (2¢) per thousand (1,000) cubic feet even though such compressors or any part of them are not operated continuously.

10. At or near each delivery point, Buyer shall provide a measuring station properly equipped with orifice meter or meters of standard type for the measurement of gas delivered to Buyer hereunder. Seller shall have access to the measuring equipment at all reasonable times, but readings, calibrations and adjustments thereof, and changing of charts shall be done under the direction of Buyer at no expense to Seller. Buyer shall read or have the meters read weekly, or as often as may be necessary, and shall keep said meters accurate and in repair, making monthly tests of the accuracy thereof. Seller shall have the right to challenge the accuracy of said meters, and when challenged, the meters shall be tested and repaired by Buyer; the cost of such special test to be borne by Buyer if the percentage of inaccuracy is found to be more than two per cent (2%), but if the percentage of inaccuracy is found

to be two percent (2%) or less, the cost of such special test shall be borne by Seller. If said meters are found on any test to be inaccurate more than two per cent (2%), then corrections shall be made for the time said meters have been inaccurate, but in no event to extend back beyond the last date settlement for gas was due. The charts and records from such measuring equipment shall remain the property of Buyer. Upon request of Seller, Buyer shall submit to Seller records and charts from its measuring equipment, together with calculations therefrom, for Seller's inspection and verification, subject to return by Seller within twenty (20) days from receipt thereof, after which return the charts and records shall be kept on file by Buyer for a period of one year, after which time they may at Buyer's option be destroyed; provided that none of such charts and records will be destroyed by Buyer without first offering same to Seller.

If, for any reason, meters are out of service or out of repair so that the amount of gas delivered cannot be ascertained or computed from the readings thereof, the gas delivered during the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

(a) By using the registration of any check meter or meters if installed and accurately registering;

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation;

(c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately.

Seller may, at its option and expense, install and operate check

meters to check Buyer's meters, but measurement of gas for the purpose of this agreement shall be by Buyer's meters only, except in cases hereinabove specifically provided to the contrary. Check meters shall be either the orifice or volumetric type and shall be subject at all reasonable times to inspection or examination by Buyer, but the reading, calibration and adjustment thereof and changing of charts shall be done only by Seller.

11. All gas delivered by Seller to Buyer hereunder shall be measured in accordance with the basis of measurement provided for in the Standard Gas Measurement Law, known as House Bill 159, enacted by the Fifty-first Legislature of the State of Texas.

A "cubic foot of gas" for the purpose of measurement of the gas delivered by Seller to Buyer hereunder is the amount of gas necessary to fill a cubic foot of space when the gas is at the absolute pressure of fourteen and sixty-five one-hundredths (14.65) pounds per square inch and at a base temperature of sixty degrees (60°) Fahrenheit, and the gas volumes shall be computed into such units in the manner described below.

The orifice coefficient for each meter shall be calculated at the above base pressure and base temperature, at a flowing temperature of sixty degree (60°) Fahrenheit, and for a gas of sixty-hundredths (.60) specific gravity. Recognizing that the average atmospheric pressure at the point of measurement is approximately fourteen and seven-tenths (14.7) pounds per square inch, it is agreed that, for the purpose of measurement hereunder, the atmospheric pressure shall be assumed to be fourteen and seven-tenths (14.7) pounds per square inch. Pressure taps for orifice meter installations shall be taken from the pipe runs two and one-half internal pipe diameters upstream

and eight internal pipe diameters downstream from the face of the orifice plate.

**6079**

The temperature of the gas shall be determined by the use of recording thermometers at all of the points of delivery so installed that they may properly record the temperature of the gas flowing through the meter. The average temperature recorded shall be used in computing measurements and the orifice coefficient shall be corrected for each degree variation in the average temperature from sixty degrees (60°) Fahrenheit.

The specific gravity of the gas delivered hereunder shall be determined by spot tests made with an Edwards type gas balance, or by such other method as shall be agreed upon between the parties, said tests to be made at least every three (3) months. Each test so made shall determine the specific gravity to be used in the computation of the volume of gas delivered during the succeeding billing months until the next test. The orifice coefficient shall be corrected for each one thousandth (.001) variation in the specific gravity of the gas from sixty-hundredths (.60).

All orifice meter computations required shall be made in accordance with formulae and tables contained in Metric Metal Works Bulletin E-2 (Revised 1931).

The volumes of gas as determined in the manner described above shall be adjusted to give effect to the deviation of such gas from Boyle's law, as follows:

(a) There shall be determined the average pressure (gauge) at which the gas was delivered during the period under consideration;

(b) There shall be determined the average temperature at which the gas was delivered during the period under consideration;

BOYLE'S LAW DEVIATION MULTIPLIERS FOR ORIFICE METER

CHARLES' LAW DEVIATION MULTIPLIERS FOR ORIFICE METER

| Average Pressure Psig | Average Temperature - °F | | | | | | | | | | | | | | | | | | | | | | | | | | Average Pressure Psig |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 40-44 | 45-49 | 50-54 | 55-59 | 60-64 | 65-69 | 70-74 | 75-79 | 80-84 | 85-89 | 90-94 | 95-99 | 100-104 | 105-109 | 110-114 | 90-94 | 95-99 | 100-104 | 105-109 | 110-114 | 115-119 | 120-124 | 125-129 | 130-134 | 135-139 | 140-144 | 145-149 | |
| 0-49 | 1.004 | 1.004 | 1.004 | 1.004 | 1.003 | 1.003 | 1.003 | 1.003 | 1.003 | 1.003 | 1.003 | 1.003 | 1.002 | 1.002 | 1.002 | 1.003 | 1.003 | 1.002 | 1.002 | 1.002 | 1.002 | 1.002 | 1.002 | 1.002 | 1.002 | 1.002 | 0-49 |
| 50-99 | 1.009 | 1.009 | 1.009 | 1.008 | 1.008 | 1.008 | 1.008 | 1.007 | 1.007 | 1.007 | 1.007 | 1.008 | 1.008 | 1.008 | 1.007 | 1.007 | 1.008 | 1.008 | 1.006 | 1.006 | 1.006 | 1.006 | 1.006 | 1.006 | 1.006 | 1.006 | 50-99 |
| 100-149 | 1.014 | 1.014 | 1.013 | 1.013 | 1.012 | 1.012 | 1.012 | 1.011 | 1.011 | 1.010 | 1.010 | 1.010 | 1.009 | 1.009 | 1.009 | 1.010 | 1.010 | 1.009 | 1.009 | 1.009 | 1.008 | 1.008 | 1.008 | 1.007 | 1.007 | 1.007 | 100-149 |
| 150-199 | 1.019 | 1.018 | 1.017 | 1.017 | 1.016 | 1.016 | 1.016 | 1.016 | 1.014 | 1.014 | 1.014 | 1.013 | 1.013 | 1.012 | 1.012 | 1.016 | 1.015 | 1.013 | 1.012 | 1.012 | 1.011 | 1.011 | 1.011 | 1.010 | 1.010 | 1.009 | 150-199 |
| 200-249 | 1.024 | 1.023 | 1.022 | 1.022 | 1.021 | 1.020 | 1.020 | 1.019 | 1.018 | 1.018 | 1.017 | 1.017 | 1.016 | 1.016 | 1.015 | 1.017 | 1.017 | 1.016 | 1.016 | 1.016 | 1.014 | 1.014 | 1.013 | 1.013 | 1.012 | 1.012 | 1.011 | 200-249 |
| 250-299 | 1.029 | 1.028 | 1.027 | 1.026 | 1.025 | 1.024 | 1.024 | 1.023 | 1.022 | 1.021 | 1.021 | 1.020 | 1.019 | 1.019 | 1.018 | 1.021 | 1.020 | 1.019 | 1.019 | 1.018 | 1.017 | 1.016 | 1.016 | 1.015 | 1.015 | 1.015 | 1.014 | 250-299 |
| 300-349 | 1.034 | 1.033 | 1.032 | 1.031 | 1.030 | 1.029 | 1.028 | 1.027 | 1.026 | 1.025 | 1.024 | 1.024 | 1.023 | 1.022 | 1.021 | 1.026 | 1.024 | 1.024 | 1.023 | 1.022 | 1.021 | 1.020 | 1.020 | 1.018 | 1.018 | 1.017 | 1.016 | 300-349 |
| 350-399 | 1.039 | 1.038 | 1.036 | 1.036 | 1.034 | 1.033 | 1.032 | 1.031 | 1.030 | 1.029 | 1.028 | 1.027 | 1.026 | 1.025 | 1.024 | 1.029 | 1.028 | 1.027 | 1.026 | 1.026 | 1.024 | 1.023 | 1.022 | 1.021 | 1.021 | 1.020 | 1.019 | 350-399 |
| 400-449 | 1.044 | 1.043 | 1.041 | 1.040 | 1.039 | 1.038 | 1.036 | 1.036 | 1.034 | 1.033 | 1.032 | 1.031 | 1.030 | 1.029 | 1.028 | 1.032 | 1.031 | 1.030 | 1.029 | 1.028 | 1.027 | 1.026 | 1.026 | 1.024 | 1.023 | 1.022 | 1.021 | 400-449 |
| 450-499 | 1.050 | 1.048 | 1.046 | 1.046 | 1.043 | 1.042 | 1.040 | 1.039 | 1.038 | 1.036 | 1.035 | 1.034 | 1.033 | 1.031 | 1.030 | 1.035 | 1.034 | 1.033 | 1.031 | 1.030 | 1.029 | 1.028 | 1.027 | 1.027 | 1.026 | 1.025 | 1.024 | 450-499 |
| 500-549 | 1.055 | 1.053 | 1.051 | 1.049 | 1.048 | 1.046 | 1.045 | 1.043 | 1.041 | 1.040 | 1.039 | 1.037 | 1.036 | 1.035 | 1.034 | 1.039 | 1.037 | 1.036 | 1.035 | 1.033 | 1.032 | 1.031 | 1.030 | 1.029 | 1.028 | 1.027 | 1.026 | 500-549 |
| 550-599 | 1.060 | 1.058 | 1.056 | 1.054 | 1.052 | 1.051 | 1.049 | 1.047 | 1.045 | 1.044 | 1.042 | 1.040 | 1.039 | 1.038 | 1.036 | 1.042 | 1.040 | 1.039 | 1.038 | 1.035 | 1.035 | 1.033 | 1.032 | 1.031 | 1.030 | 1.029 | 1.028 | 550-599 |
| 600-649 | 1.066 | 1.064 | 1.062 | 1.059 | 1.057 | 1.055 | 1.053 | 1.052 | 1.049 | 1.048 | 1.046 | 1.044 | 1.042 | 1.041 | 1.039 | 1.046 | 1.044 | 1.042 | 1.041 | 1.039 | 1.038 | 1.036 | 1.035 | 1.034 | 1.033 | 1.031 | 1.030 | 600-649 |
| 650-699 | 1.072 | 1.069 | 1.067 | 1.064 | 1.062 | 1.060 | 1.057 | 1.056 | 1.053 | 1.052 | 1.050 | 1.048 | 1.046 | 1.044 | 1.042 | 1.050 | 1.048 | 1.046 | 1.044 | 1.043 | 1.041 | 1.040 | 1.038 | 1.036 | 1.034 | 1.035 | 1.032 | 650-699 |
| 700-749 | 1.077 | 1.075 | 1.072 | 1.069 | 1.067 | 1.064 | 1.061 | 1.059 | 1.057 | 1.056 | 1.053 | 1.051 | 1.050 | 1.047 | 1.046 | 1.053 | 1.051 | 1.049 | 1.047 | 1.046 | 1.044 | 1.042 | 1.041 | 1.039 | 1.038 | 1.036 | 1.035 | 700-749 |
| 750-799 | 1.083 | 1.080 | 1.077 | 1.074 | 1.071 | 1.068 | 1.066 | 1.063 | 1.061 | 1.059 | 1.056 | 1.054 | 1.052 | 1.050 | 1.048 | 1.056 | 1.054 | 1.052 | 1.050 | 1.049 | 1.047 | 1.045 | 1.043 | 1.041 | 1.040 | 1.039 | 1.037 | 750-799 |
| 800-849 | 1.089 | 1.086 | 1.082 | 1.079 | 1.076 | 1.072 | 1.070 | 1.067 | 1.064 | 1.062 | 1.060 | 1.058 | 1.056 | 1.054 | 1.052 | 1.060 | 1.058 | 1.056 | 1.054 | 1.052 | 1.050 | 1.048 | 1.046 | 1.044 | 1.043 | 1.041 | 1.040 | 800-849 |
| 850-899 | 1.094 | 1.090 | 1.087 | 1.083 | 1.080 | 1.077 | 1.074 | 1.071 | 1.068 | 1.065 | 1.063 | 1.061 | 1.059 | 1.057 | 1.055 | 1.063 | 1.061 | 1.059 | 1.057 | 1.055 | 1.053 | 1.051 | 1.049 | 1.047 | 1.045 | 1.044 | 1.042 | 850-899 |
| 900-949 | 1.100 | 1.096 | 1.092 | 1.088 | 1.084 | 1.081 | 1.078 | 1.075 | 1.072 | 1.069 | 1.066 | 1.064 | 1.062 | 1.060 | 1.058 | 1.066 | 1.064 | 1.062 | 1.060 | 1.058 | 1.055 | 1.053 | 1.051 | 1.049 | 1.047 | 1.045 | 1.044 | 900-949 |
| 950-999 | 1.106 | 1.101 | 1.097 | 1.092 | 1.089 | 1.085 | 1.082 | 1.078 | 1.075 | 1.073 | 1.070 | 1.067 | 1.065 | 1.063 | 1.061 | 1.070 | 1.067 | 1.065 | 1.063 | 1.061 | 1.058 | 1.056 | 1.054 | 1.052 | 1.050 | 1.048 | 1.046 | 950-999 |
| 1000-1049 | 1.111 | 1.106 | 1.102 | 1.097 | 1.093 | 1.089 | 1.085 | 1.082 | 1.079 | 1.076 | 1.073 | 1.071 | 1.068 | 1.065 | 1.063 | 1.073 | 1.071 | 1.068 | 1.065 | 1.063 | 1.061 | 1.059 | 1.056 | 1.054 | 1.052 | 1.050 | 1.048 | 1000-1049 |
| 1050-1099 | 1.117 | 1.112 | 1.107 | 1.102 | 1.098 | 1.093 | 1.090 | 1.086 | 1.082 | 1.079 | 1.077 | 1.076 | 1.071 | 1.069 | 1.066 | 1.077 | 1.076 | 1.071 | 1.069 | 1.067 | 1.064 | 1.062 | 1.059 | 1.057 | 1.056 | 1.053 | 1.051 | 1050-1099 |
| 1100-1149 | 1.122 | 1.117 | 1.111 | 1.106 | 1.102 | 1.097 | 1.093 | 1.089 | 1.086 | 1.083 | 1.080 | 1.077 | 1.074 | 1.072 | 1.069 | 1.080 | 1.077 | 1.074 | 1.072 | 1.069 | 1.067 | 1.064 | 1.062 | 1.060 | 1.057 | 1.056 | 1.053 | 1100-1149 |
| 1150-1199 | 1.127 | 1.122 | 1.116 | 1.110 | 1.106 | 1.101 | 1.097 | 1.093 | 1.089 | 1.086 | 1.083 | 1.080 | 1.077 | 1.074 | 1.072 | 1.083 | 1.080 | 1.077 | 1.074 | 1.072 | 1.069 | 1.066 | 1.064 | 1.062 | 1.059 | 1.057 | 1.056 | 1150-1199 |
| 1200-1249 | 1.133 | 1.127 | 1.121 | 1.116 | 1.110 | 1.106 | 1.100 | 1.096 | 1.092 | 1.089 | 1.086 | 1.083 | 1.079 | 1.077 | 1.074 | 1.086 | 1.083 | 1.079 | 1.077 | 1.074 | 1.071 | 1.069 | 1.066 | 1.064 | 1.061 | 1.059 | 1.056 | 1200-1249 |
| 1250-1299 | 1.139 | 1.132 | 1.126 | 1.119 | 1.113 | 1.108 | 1.104 | 1.100 | 1.096 | 1.092 | 1.089 | 1.086 | 1.082 | 1.080 | 1.076 | 1.089 | 1.086 | 1.082 | 1.080 | 1.077 | 1.074 | 1.071 | 1.069 | 1.066 | 1.063 | 1.061 | 1.058 | 1250-1299 |
| 1300-1349 | 1.144 | 1.136 | 1.129 | 1.123 | 1.117 | 1.112 | 1.107 | 1.103 | 1.099 | 1.096 | 1.092 | 1.089 | 1.085 | 1.082 | 1.079 | 1.092 | 1.089 | 1.085 | 1.082 | 1.079 | 1.076 | 1.073 | 1.071 | 1.068 | 1.065 | 1.062 | 1.060 | 1300-1349 |
| 1350-1399 | 1.149 | 1.141 | 1.134 | 1.127 | 1.121 | 1.115 | 1.110 | 1.106 | 1.102 | 1.098 | 1.094 | 1.091 | 1.088 | 1.085 | 1.082 | 1.094 | 1.091 | 1.088 | 1.085 | 1.082 | 1.079 | 1.076 | 1.073 | 1.070 | 1.067 | 1.064 | 1.062 | 1350-1399 |
| 1400-1449 | 1.154 | 1.146 | 1.138 | 1.131 | 1.125 | 1.119 | 1.114 | 1.109 | 1.105 | 1.101 | 1.097 | 1.094 | 1.090 | 1.087 | 1.084 | 1.097 | 1.094 | 1.090 | 1.087 | 1.084 | 1.081 | 1.078 | 1.076 | 1.072 | 1.069 | 1.066 | 1.064 | 1400-1449 |
| 1450-1499 | 1.159 | 1.150 | 1.142 | 1.135 | 1.128 | 1.122 | 1.117 | 1.113 | 1.108 | 1.104 | 1.100 | 1.096 | 1.093 | 1.089 | 1.086 | 1.100 | 1.096 | 1.093 | 1.089 | 1.086 | 1.083 | 1.080 | 1.077 | 1.073 | 1.070 | 1.068 | 1.065 | 1450-1499 |


| 1000-1049 | 1.111 | 1.106 | 1.102 | 1.097 | 1.093 | 1.089 | 1.085 | 1.082 | 1.079 | 1.076 | 1.073 | 1.071 | 1.068 | 1.065 | 1.063 | 1.073 | 1.071 | 1.068 | 1.065 | 1.063 | 1.061 | 1.059 | 1.056 | 1.054 | 1.052 | 1.050 | 1.048 | 1000-1049 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1050-1099 | 1.117 | 1.112 | 1.107 | 1.102 | 1.098 | 1.093 | 1.090 | 1.086 | 1.082 | 1.079 | 1.077 | 1.076 | 1.071 | 1.069 | 1.066 | 1.077 | 1.076 | 1.071 | 1.069 | 1.067 | 1.064 | 1.062 | 1.059 | 1.057 | 1.056 | 1.053 | 1.051 | 1050-1099 |
| 1100-1149 | 1.122 | 1.117 | 1.111 | 1.106 | 1.102 | 1.097 | 1.093 | 1.089 | 1.086 | 1.083 | 1.080 | 1.077 | 1.074 | 1.072 | 1.069 | 1.080 | 1.077 | 1.074 | 1.072 | 1.069 | 1.067 | 1.064 | 1.062 | 1.060 | 1.057 | 1.056 | 1.053 | 1100-1149 |
| 1150-1199 | 1.127 | 1.122 | 1.116 | 1.110 | 1.106 | 1.101 | 1.097 | 1.093 | 1.089 | 1.086 | 1.083 | 1.080 | 1.077 | 1.074 | 1.072 | 1.083 | 1.080 | 1.077 | 1.074 | 1.072 | 1.069 | 1.066 | 1.064 | 1.062 | 1.059 | 1.057 | 1.056 | 1150-1199 |
| 1200-1249 | 1.133 | 1.127 | 1.121 | 1.116 | 1.110 | 1.106 | 1.100 | 1.096 | 1.092 | 1.089 | 1.086 | 1.083 | 1.079 | 1.077 | 1.074 | 1.086 | 1.083 | 1.079 | 1.077 | 1.074 | 1.071 | 1.069 | 1.066 | 1.064 | 1.061 | 1.059 | 1.056 | 1200-1249 |
| 1250-1299 | 1.139 | 1.132 | 1.126 | 1.119 | 1.113 | 1.108 | 1.104 | 1.100 | 1.096 | 1.092 | 1.089 | 1.086 | 1.082 | 1.080 | 1.076 | 1.089 | 1.086 | 1.082 | 1.080 | 1.077 | 1.074 | 1.071 | 1.069 | 1.066 | 1.063 | 1.061 | 1.058 | 1250-1299 |
| 1300-1349 | 1.144 | 1.136 | 1.129 | 1.123 | 1.117 | 1.112 | 1.107 | 1.103 | 1.099 | 1.096 | 1.092 | 1.089 | 1.085 | 1.082 | 1.079 | 1.092 | 1.089 | 1.085 | 1.082 | 1.079 | 1.076 | 1.073 | 1.071 | 1.068 | 1.065 | 1.062 | 1.060 | 1300-1349 |
| 1350-1399 | 1.149 | 1.141 | 1.134 | 1.127 | 1.121 | 1.115 | 1.110 | 1.106 | 1.102 | 1.098 | 1.094 | 1.091 | 1.088 | 1.085 | 1.082 | 1.094 | 1.091 | 1.088 | 1.085 | 1.082 | 1.079 | 1.076 | 1.073 | 1.070 | 1.067 | 1.064 | 1.062 | 1350-1399 |
| 1400-1449 | 1.154 | 1.146 | 1.138 | 1.131 | 1.125 | 1.119 | 1.114 | 1.109 | 1.105 | 1.101 | 1.097 | 1.094 | 1.090 | 1.087 | 1.084 | 1.097 | 1.094 | 1.090 | 1.087 | 1.084 | 1.081 | 1.078 | 1.076 | 1.072 | 1.069 | 1.066 | 1.064 | 1400-1449 |
| 1450-1499 | 1.159 | 1.150 | 1.142 | 1.135 | 1.128 | 1.122 | 1.117 | 1.113 | 1.108 | 1.104 | 1.100 | 1.096 | 1.093 | 1.089 | 1.086 | 1.100 | 1.096 | 1.093 | 1.089 | 1.086 | 1.083 | 1.080 | 1.077 | 1.073 | 1.070 | 1.068 | 1.065 | 1450-1499 |


Exhibit "A"

Contract between Union Producing Company and United Gas Pipe Line Company

9-27-48

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(c) There shall be selected from the table of multipliers attached hereto and made a part hereof, and identified



as Exhibit "A", the multiplier corresponding to the average pressure and the average temperature as determined in (a) and (b) above;

(d) The corrected volume of gas for the period under consideration shall be the result obtained by multiplying the volume of gas as determined in the manner above set forth by the multiplier determined in (c) above.

If the Railroad Commission of Texas should at any time disapprove the multipliers set out in said Exhibit "A" or if at any time the composition of the gas delivered to Buyer hereunder shall have materially changed so that the multipliers set out in Exhibit "A" are no longer reasonable, either party may call for a review of such multipliers. Such new multipliers shall be subject to the approval of the Railroad Commission of Texas, if such Commission at that time has jurisdiction over such matters.

12. Subject to the provisions of Article 21 of this contract, the price to be paid by Buyer to Seller for each one thousand (1,000) cubic feet of gas delivered hereunder shall be six cents (6¢) during the period commencing on the effective date hereof and terminating as of February 15, 1956, and thereafter eight cents (8¢).

13. For the purpose of billing and accounting for gas delivered hereunder, the day shall begin at 7:00 A.M. and extend to 7:00 A.M. of the following day, and the month (hereunder called "billing month") shall begin at 7:00 A.M. on the first day of the calendar month and extend to 7:00 A.M. on the first day of the following calendar month.

Settlement shall be made by check each calendar month for all gas delivered hereunder during the preceding billing month.

14. Buyer shall, in so far as Seller is able to convey such rights, have an easement and servitude on Seller's lands and leasehold for installing



operating and maintaining equipment, with the right to remove the same before or within a reasonable time after the expiration of this contract; shall further have the right to operate, inspect and test measuring equipment, and shall at all times have the right to free access to any part of Seller's lands and leaseholds for any purpose connected with any matter or thing covered by this contract.

15. As between the parties hereto, Seller shall be in control and possession of the gas deliverable hereunder and responsible for any damage or injury caused thereby until the same shall have been delivered to Buyer, after which delivery Buyer shall be deemed to be in exclusive control and possession thereof and responsible for any injury or damage caused thereby.

16. This contract is subject to all present and future valid orders, rules and regulations of any regulatory body of the Federal Government or the State in which said lands and leaseholds are situated, having jurisdiction.

17. In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected

by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy,

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wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a), in those instances where either party hereto is required to obtain servitudes, rights of way grants, permits or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, rights of way grants, permits or licenses; and (b) in those instances where either party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permissions.

It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of



strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

18. This contract shall continue and remain in full force and effect until February 15, 1961.

19. No assignment or conveyance of any interest of Seller shall be binding upon Buyer until Buyer has been furnished a certified copy of such assignment or conveyance, together with properly executed transfer orders.

20. It is recognized that Seller is presently delivering gas to Buyer from some of the lands and leaseholds covered hereby under the terms and conditions of the following Gas Purchase Contracts between Seller and Buyer:

(1) Contract executed June 26, 1945, Supplement to said contract recorded in Volume 60, Pages 349-351 of the Deed Records of Refugio County, Texas.

(2) Contract executed March 26, 1946, Supplement to said contract recorded in Volume 60, Pages 351-352 of the Deed Records of Refugio County, Texas.

(3) Contract executed April 26, 1946, Supplement to said contract recorded in Volume 60, Pages 352-354 of the Deed Records of Refugio County, Texas.

(4) Contract executed April 26, 1946, Supplement to said contract recorded in Volume 60, Pages 354-356 of the Deed Records of Refugio County, Texas.

Seller and Buyer expressly agree that, as of the effective date hereof, the above described Gas Purchase Contracts are hereby canceled and are of no further force or effect whatsoever; it, however, being expressly understood and agreed that the amounts previously paid by Buyer to Seller for the purchase of such gas from Fox Field under the terms of the above described contracts from and after February 15, 1951 shall be credited to and deducted from the amounts payable by Buyer to Seller for gas delivered hereunder from and after February 15, 1951.



21. It is recognized that Buyer owns an eight-inch (8″) field lateral line in the area in which the lands and leaseholds covered hereby are located, operating at a pressure of approximately two hundred and fifty (250) pounds per square inch gauge. Seller may, from time to time during the term hereof, find it practicable and feasible to request that Buyer connect some of Seller's well or wells covered hereby into said eight-inch (8″) field lateral line. In the event such an arrangement is agreeable with Buyer, such connections shall be made.

The price per one thousand (1,000) cubic feet to be paid by Buyer to Seller for any gas which is delivered through said eight-inch (8″) field lateral line shall be the price obtained by multiplying six cents (6¢) by a fraction, the numerator which shall be the total number of cubic feet, measured at a pressure base of sixteen and seven-tenths (16.7) pounds per square inch, at a base temperature of sixty degrees (60°) Fahrenheit, with the flowing temperature and specific gravity of such gas being assumed sixty degrees (60°) Fahrenheit and sixty hundredths (.60), respectively, with no adjustment for variation from Boyle's Law, contained in the gas delivered hereunder into said eight-inch (8″) line during any given period of time, and the denominator which shall be the total number of cubic

feet computed on the basis of measurement set forth in Article 11 of this contract, contained in the same gas. Buyer may, from time to time during the term of this contract, have the gas which Buyer receives into said eight-inch (8″) line processed in Bennett Oil and Refining Company's Refugio Gasoline Plant in Refugio County, Texas, in such event, Buyer shall pay to Seller all royalties and other payments received by Buyer from Bennett Oil and Refining Company for the products extracted from such gas. In the event that it is necessary



that Buyer compress such gas so that it can be transported through such eight-inch (8″) line, Buyer shall not make any deduction in price for such compression.

Notwithstanding anything to the contrary, nothing herein shall ever be construed as imposing any obligation on Buyer whatsoever to transport the gas delivered hereunder through such eight-inch (8″) line, or to continue such operations, and if Buyer does not agree to transport such gas through such eight-inch (8″) line or discontinues such operations at any time during the term hereof, this Article 21 shall be of no force or effect whatsoever, and Seller shall be obligated to deliver such gas to Buyer in accordance with the other terms and provisions of this contract.

22. This contract shall become effective as of February 15, 1951.

23. This agreement shall be binding upon the parties hereto, their respective successors and assigns and shall constitute a real right and covenant running with the land.

(6085)

IN WITNESS WHEREOF, the parties have caused this agreement to be executed in duplicate originals on the day and year first hereinabove written.

UNION PRODUCING COMPANY
By H. R. BENNETT, *Vice President*
*Seller.*

ATTEST:
B. M. BYRD
*Asst. Secretary*

UNITED GAS PIPE LINE COMPANY
By ED PARKES, *Vice President*
*Buyer.*

ATTEST:
B. M. BYRD
*Asst. Secretary*

## 6086

STATE OF LOUISIANA, PARISH OF CADDO

Before me, the undersigned, a Notary Public in and for said Parish and State, on this day personally appeared H. R. Bennett, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Union Producing Company, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this the 2nd day of September, A. D. 1952.

BUENA PITTON
Notary Public in and for Caddo Parish, Louisiana

## 6087

STATE OF LOUISIANA, PARISH OF CADDO

Before me, the undersigned, a Notary Public in and for said Parish and State, on this day personally appeared Ed Parker, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said United Gas Pipe Line Company, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this the 4th day of September, A. D., 1952.

RAI S. MELTON
Notary Public in and for Caddo Parish, Louisiana

**6178**

## GAS PURCHASE CONTRACT

McFADDIN FIELD CONTRACT No. 2568

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a corporation, hereinafter designated as Seller, and HOUSTON GULF GAS COMPANY, a corporation, hereinafter designated as Buyer.

WITNESSETH THAT:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct of Buyer's business and in accordance with the terms and provisions hereof, all merchantable natural gas produced from all wells now drilled or which may hereafter be drilled on the hereinafter described premises during the term of this contract; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of its oil and gas properties located in the field in which said premises are located and such other natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises; said premises being situated in the County of Victoria, State of Texas, and being described as follows, to-wit: (4582-A) 5,000 acres of land more or less, a part of the Maria Josefa Traviesa Survey, of one league, Abst. 114, Patent 66, Vol. 17; the J. M. Valdez Survey of 1¼ leagues, Abst. 115, Patent 65, Vol. 17; the C. O. Edwards Survey of 1280 acres, Abst. 526, Patent 231, Vol. 8, and the C. L. Mann Survey of 640 acres, Abst. 528, Patent 533, Vol. 9, and being a part of the McFaddin Ranch in Victoria County, Texas, more fully described as follows, to-wit:

* * * * * * * * * *

6180

10. The price per thousand subic feet to be paid Seller by Buyer for natural gas delivered hereunder shall be as follows: Three and one-twelfth cents (3 1/12¢).

* * * * * * * * * *

15. This contract shall continue in full force and effect until December 31, 1962; but in case Seller's right to produce natural gas from the above described premises is dependent upon any oil and gas lease or mineral rights, the term hereof shall be limited to the life of such lease or of such mineral rights, including any renewals and extensions thereof, but in no event shall extend beyond December 31, 1962.

* * * * * * * * * *

6181

IN WITNESS WHEREOF, this contract has been executed on this 27th day of April, 1944, by Seller, and executed on this 27th day of April, 1944, by Buyer.

UNION PRODUCING COMPANY
By R. H. HARGROVE, *Vice-President*

ATTEST:
GEO. L. HISER, *Assistant Secretary*

WITNESSES:
A. W. WILLIAMS
H. E. RANDALL

HOUSTON GULF GAS COMPANY
By M. A. ABERNATHY, *Vice-President*

ATTEST:
J. H. MIRACLE, *Secretary*

WITNESSES:
A. W. WILLIAMS
H. E. RANDALL

* * * * * * * * * *

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1380

# GAS PURCHASE CONTRACT

THIS CONTRACT made and entered into this 29th day of May, 1950, by and between SHELL OIL COMPANY, a corporation, and UNION PRODUCING COMPANY, a corporation, hereinafter designated collectively and in the singular as "Seller," and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter designated as "Buyer";

WITNESSETH:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct of Buyer's business, and in accordance with the terms and provisions hereof, merchantable natural gas in the quantities hereinafter set forth produced from all wells now or hereafter drilled during the term of this agreement on all lands and leaseholds now owned or hereafter acquired by the parties Seller hereto, either individually or jointly, in the Sealy Field, Austin County, Texas, as such field now exists or as it may hereafter be extended or enlarged during the term of this agreement, and Seller's proportionate part of all merchantable natural gas produced from any unitized or pooled lands and leaseholds in said field in which Seller has or shall hereafter acquire an interest, and the proportionate parts of said gas which belong to other parties in said unitized or pooled lands and leaseholds in said field which Seller has or shall hereafter have at any time and from time to time the right to market under the

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terms of any pooling, unitization or joint operating agreement, or other arrangement to which Seller and others are parties; subject, however, to the reservation by Seller of sufficient natural gas for:

1. The development and operation of the leasholds, including gas for the repressuring of oil producing horizons in such field;

2. The operation of any gasoline plant or compressor station, operated by or for the benefit of Seller in the Sealy Field; and the fuel requirements of Seller's production camp, employee houses and pipe line stations located in such field; and

3. The supplying to Seller's lessors of gas to which such lessors are entitled under the terms of Seller's leaseholds in such fields.

* * * * * * * * * *

6273

8. Subject to the other terms and provisions hereof, the price to be paid by Buyer to Seller for each one thousand (1,000) cubic feet of gas sold and delivered to Buyer hereunder shall be six cents (6¢) during the first five years of the primary term hereof, and seven cents (7¢) thereafter.

* * * * * * * * * *

6275

13. Subject to the other provisions hereof, this agreement shall continue and remain in full force and effect for a primary term of ten (10) years from the date upon which deliveries of gas are commenced hereunder, and shall continue in force and effect thereafter for successive periods of one (1) year each, provided, however, that either party hereto may terminate this agreement at the end of the pri-

mary term or any succeeding annual period by giving to the other party at least ninety (90) days' prior written notice of the intention of the party giving such notice to terminate this agreement.

* * * * * * * * * *

6277

IN WITNESS WHEREOF, this contract has been executed as of the day and year first above written.

SHELL OIL COMPANY
By T. R. GRIEVE, *Attorney in Fact*

UNION PRODUCING COMPANY
By H. R. BENNETT, *Vice President*
*Seller.*

ATTEST:
B. M. BYRD
*Asst. Secretary*

UNITED GAS PIPE LINE COMPANY
By ED PARKES, *Vice President*
*Buyer.*

ATTEST:
J. H. MIRACLE
*Secretary*

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6301

## GAS PURCHASE CONTRACT

Lease No. 4579
REFUGIO FIELD — CONTRACT No. 2586

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a corporation, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter designated as Buyer.

(6301)

WITNESSETH THAT:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct of Buyer's business and in accordance with the terms and provisions hereof, all merchantable natural gas produced from all wells now drilled or which may hereafter be drilled on the hereinafter described premises during the term of this contract; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of its oil and gas properties located in the field in which said premises are located and such other natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises; said premises being situated in the County of Refugio, State of Texas, and being described as follows, to-wit:

* * * * * * * * * *

6303

10. The price per thousand cubic feet to be paid Seller by Buyer for natural gas delivered hereunder shall be as follows: Four Cents (4¢) per MCF.

* * * * * * * * * *

15. This contract shall continue in full force and effect until December 31, 1962; but in case Seller's right to produce natural gas from the above described premises is dependent upon any oil and gas lease or mineral rights, the term hereof shall be limited to the life of such lease or of such mineral rights, including any renewals and extensions thereof, but in no event shall extend beyond December 31, 1962.

* * * * * * * * * *

6304

IN WITNESS WHEREOF, this contract has been executed on this 8th day of November, 1945, by Seller, and executed on this 8th day of November, 1945, by Buyer.

UNION PRODUCING COMPANY,
By H. R. HARGROVE, *Vice-President.*

ATTEST:

J. H. MIRACLE, *Secretary.*

WITNESSES:
A. E. LUHARD.
FRANCES EMMER.

UNITED GAS PIPE LINE COMPANY,
By M. A. ABERNATHY, *Vice-President.*

ATTEST:

J. H. MIRACLE, *Secretary.*

WITNESSES:
A. E. LUHARD.
FRANCES EMMER.

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6361

DURKEE FIELD — CONTRACT No. 2608

## GAS PURCHASE CONTRACT

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a corporation, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter designated as Buyer;

WITNESSETH:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct

of Buyer's business and in accordance with the terms and provisions hereof, all merchantable natural gas produced during the term of this contract from the lands and leaseholds now owned or hereafter acquired by Seller, including Seller's interest in lands and leaseholds jointly owned with others, located in what is known as the Durkee Field, Harris County, Texas; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of its oil and gas properties located in said field and such other natural gas as the lessors are entitled to use under

6362

the terms of the lease or leases covering said premises.

* * * * * * * * * *

6372

10. The price per thousand cubic feet to be paid Seller by Buyer for natural gas delivered hereunder shall be as follows: Four cents (4¢) during the first five years, and Five Cents (5¢) thereafter.

* * * * * * * * * *

6373

15. This agreement shall continue and remain in full force and effect for a period of ten (10) years from April 15, 1948, and shall continue in force and effect thereafter for successive periods of one year each; provided, however, that either party hereto may terminate this agreement at the end of the original term or any succeeding annual period by giving to the other party at least ninety (90) days' prior written notice of the intention of the party giving such to terminate this agreement.

* * * * * * * * * *

6377

IN WITNESS WHEREOF, this contract has been executed on this 24th day of June, 1948, by Seller, and executed on this 1st day of July, 1948, by Buyer.

UNION PRODUCING COMPANY,
By H. R. HARGROVE, *Vice President.*
*Seller.*

ATTEST:
J. H. MIRACLE,
*Secretary,*

UNITED GAS PIPE LINE COMPANY,
By ED PARKES, *Vice President.*
*Buyer.*

ATTEST:
J. H. MIRACLE,
*Secretary,*

6389

## GAS PURCHASE CONTRACT

FAIRBANKS-ROSSLYN-NORTH HOUSTON FIELD

CONTRACT No. 2604

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a corporation, hereinafer designated as Seller, and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter designated as Buyer.

WITNESSETH THAT:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct

of Buyer's business and in accordance with the terms and provisions hereof, all merchantable natural gas produced from all wells now drilled or which may hereafter be drilled on the hereinafter described premises during the term of this contract; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of its oil and gas properties located in the field in which said premises are located and such other natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises; said premises being situated in the County of Harris, State of Texas, and being described as follows, to-wit: 14.9 acres of the 274.9 acres of land, a part of the Wiley S. Powell 1/3 League Survey, Abstract 622, described as follows:

* * * * * * * * * *



10. The price per thousand cubic feet to be paid Seller by Buyer for natural gas delivered hereunder shall be as follows: Three (3) Cents.

* * * * * * * * * *

15. This contract shall continue in full force and effect until December 31, 1962; but in case Seller's right to produce natural gas from the above described premises is dependent upon any oil and gas lease or mineral rights, the term hereof shall be limited to the life of such lease or of such mineral rights, including any renewals and extensions thereof, but in no event shall extend beyond December 31, 1962.

* * * * * * * * * *

6392

IN WITNESS WHEREOF, this contract has been executed on this 18th day of September, 1947, by Seller, and executed on this 18th day of September, 1947, by Buyer.

UNION PRODUCING COMPANY,
By H. R. BENNETT, *Vice-President.*

ATTEST:
GEO. L. HISER, *Assistant Secretary.*

WITNESSES:

UNITED GAS PIPE LINE COMPANY,
By M. A. ABERNATHY, *Vice-President.*

ATTEST:
GEO. L. HISER, *Asst. Secretary.*

WITNESSES:

* * * * * * * * * *

6442

FAIRBANKS-ROSSLYN-NORTH HOUSTON FIELD

CONTRACT NO. 907

THIS AGREEMENT, made and entered into this 14th day of May, 1948, by and between UNION PRODUCING COMPANY, KIRBY PETROLEUM COMPANY, and the other parties (except United Gas Pipe Line Company) executing this agreement, all collectively hereinafter sometimes called "Sellers," and UNITED GAS PIPE LINE COMPANY, a corporation of the State of Delaware, authorized to do business in the State of Texas, hereinafter sometimes called Buyer.

WITNESSETH:

WHEREAS, Union Producing Company, Kirby Petroleum Company, Landreth Company, Keystone Royalties, Inc., et al, (the predecessors in interest to the parties Seller hereunder) entered into a contract, dated August 1, 1941, with Buyer with regard to the sale and purchase of gas produced from certain lands therein described and refererd to, situated in the North Houston Field, Harris County, Texas; and

WHEREAS, the parties hereto are desirous of making available increased quantities of gas for delivery to Buyer under said contract of August 1, 1941; and said parties desire to amend said contract to accomplish such purpose and to make certain other changes in said contract as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto



do hereby enter into the following amendatory agreement.

1.

From and after the effective date hereof, the last paragraph, in its entirety, of ARTICLE II of said contract of August 1, 1941, shall be and is hereby deleted and eliminated from said ARTICLE II.

2.

From and after the effective date hereof, ARTICLE VI of said contract of August 1, 1941 shall be and is hereby changed and amended so that said ARTICLE VI shall thereafter, in its entirety, read as follows, to-wit:

"ARTICLE VI

"The price to be paid by Buyer to Sellers for each one thousand (1,000) cubic feet of gas sold and delivered to Buyer hereunder shall be

(a) During the ten (10) year period beginning on April 26, 1948 and ending on April 26, 1958, five cents (5¢); and

(b) Thereafter, a price to be determined by agreement between Buyer and Sellers."

6444

3.

From and after the effective date hereof, ARTICLE XIII of said contract of August 1, 1941 shall be and is hereby changed and amended so that said ARTICLE XIII shall thereafter, in its entirety, read as follows, to-wit:

"ARTICLE XIII

"This agreement shall, subject to the provisions of ARTICLE I hereof, become effective upon the date upon which the processing plant provided for in said Processing Contract is completed and commences operations, and shall continue in force and effect for the full term of said Unitization Agreement. If all parties owning leases and mineral interests in lands covered by said Processing Contract have not executed this agreement on the date it becomes effective, this agreement shall nevertheless be binding upon those who have executed the same; provided, however, that the contracts referred to in ARTICLE I hereof between Buyer and such parties named as Sellers herein who do not execute this contract, shall not be cancelled and superseded hereby."

4.

Sellers recognize that their present facilities are inadequate and that some wells (including input wells) are not so connected that

6445

their capacity can be delivered to Buyer, and that consequently Sellers are not in a position currently to make available to Buyer all of the gas which can be produced from the wells located on the lands and leases subject to said Unitization Agreement. Accordingly, Sellers agree to install, with reasonable diligence, such additional facili-

ties as may be necessary from time to time in order to deliver to Buyer all gas which can be produced from all wells (including input wells), now or hereafter drilled or recompleted, on the lands and leases now or hereafter subject to said Unitization Agreement. In no event shall Sellers be obligated to drill any additional wells or to produce any well at a rate of flow which would be injurious to such well.

5.

This amendatory agreement shall be and is hereby made effective as of April 26, 1948.

6.

Except as herein specifically changed and amended, said contract of August 1, 1941 shall remain the same and continue in



full force and effect as written.

WITNESS THE EXECUTION HEREOF on the day and year first above written.

UNITED GAS PIPE LINE COMPANY,
By ED PARKES, *Vice-President.*
*Buyer.*

ATTEST:
J. H. MIRACLE,
*Secretary.*

UNION PRODUCING COMPANY,
By H. R. BENNETT, *Vice-President.*

ATTEST:
J. H. MIRACLE,
*Secretary.*

KIRBY PETROLEUM COMPANY,
By GEORGE SAWTELLE.

ATTEST:
J. A. HAMMOND.

**6447**

THE MORAN CORPORATION,
By W. T. MORAN,
J. M. FLAITZ,
BEN WOLFMAN,
H. C. COCKBURN,
F. M. CORZELIUS,

*Sellers.*

ATTEST:
H. C. AIKEN,
*Ass't. Sec'y.*

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**6506**

## GAS PURCHASE CONTRACT

NEEDVILLE FIELD — CONTRACT No. 2609

THIS CONTRACT made and entered into by and between UNION PRODUCING COMPANY, a Delaware corporation, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a Delaware corporation, hereinafter designated as Buyer;

WITNESSETH:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer and Buyer agrees to purchase and receive from Seller, at the delivery points hereinafter set forth, in the usual conduct of Buyer's business, and in accordance with the terms and provisions hereof, merchantable natural gas produced from all lands and leaseholds now or hereafter owned by Seller, including Seller's interestin lands and leaseholds jointly owned with others, in what is commonly known as the Needville Field, Fort Bend County, Texas, as such field now exists or as

it may hereafter be extended or enlarged during the term of this contract, and all of Seller's proportionate part of all merchantable natural gas produced from unitized or pooled lands and leaseholds, in said field, in which Seller has, or shall hereafter acquire an interest, and the proportionate part of said natural gas which

6507

belong to other parties in said unitized or pooled lands and leaseholds in said field, which Seller has, or shall hereafter have at any time, and from time to time, the right to market under the terms of any pooling, unitization or joint operating agreement or other arrangement to which Seller and such others are parties; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of said lands and leaseholds, and such other natural gas as the lessors are entitled to use under the terms of any of said leases.

• • • • • • • • • • •

6517

10. The price to be paid by Buyer to Seller for each one thousand (1,000) cubic feet of gas sold and delivered to Buyer hereunder shall be as follows: Four cents (4¢) during the fire five years of the primary term, and five cents (5¢) thereafter.

• • • • • • • • • • •

6522

IN WITNESS WHEREOF, this contract has been executed on this 4th day of October, 1948, by Seller, and executed on this 4th day of October, 1948, by Buyer.

UNION PRODUCING COMPANY
By H. R. BENNETT, *Vice President*

ATTEST:
J. H. MIRACLE
*Secretary*

*Seller.*

UNITED GAS PIPE LINE COMPANY
By ED PARKES, *Vice President*

ATTEST:
J. H. MIRACLE
*Secretary*

*Buyer.*

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6550

## GAS PURCHASE CONTRACT

SPANISH CAMP FIELD — CONTRACT No. 1298

THIS CONTRACT made and entered into by and between S. J. RYAN, TRUSTEE, hereinafter designated as Seller, and UNITED GAS PIPE LINE COMPANY, a corporation, hereinafter designated as Buyer;

WITNESSETH:

1. Seller, in consideration of the sum of Ten Dollars ($10.00) and other good, valuable and sufficient considerations, receipt of which is hereby acknowledged, and the covenants and agreements hereinafter set out, hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, in the usual conduct of Buyer's business and in accordance with the terms and provisions hereof, all merchantable natural gas produced from all wells now drilled or which may hereafter be drilled

(6550)

during the term of this contract, on the lands and leaseholds in Wharton County, Texas, described in Exhibit "A" attached hereto and made a part hereof; subject, however, to the reservation by Seller of sufficient natural gas for the development and operation of said premises and such other natural gas as the lessors are entitled to use under the terms of the lease or leases covering said premises.

• • • • • • • • • • •

6560

10. The price per thousand cubic feet to be paid Seller by Buyer for natural gas delivered hereunder shall be as follows: Five cents (5¢).

• • • • • • • • • • •

6562

15. This agreement shall continue and remain in full force and effect for a period of ten (10) years from the date upon which deliveries of gas are commenced hereunder, and shall continue in force and effect thereafter for successive periods of one (1) year each, provided, however, that either party hereto may terminate this agreement at the end of the original term or any succeeding annual period by giving to the other party at least ninety (90) days' prior written notice of the intention of the party giving such notice to terminate this agreement.

• • • • • • • • • • •

6564

IN WITNESS WHEREOF, this contract has been executed on this

24th day of October, 1948, by Seller, and executed as of this 7th day of November, 1949, by Buyer.

S. J. RYAN, *Trustee*

*Seller.*

UNITED GAS PIPE LINE COMPANY
By ED PARKES, *Vice President*

ATTEST:
J. H. MIRACLE,
*Secretary*

*Buyer.*





**Hearing Exhibit No. 162**

UNITED GAS PIPE LINE COMPANY

CALCULATION OF COST OF SERVICE UNDER RATE SCHEDULE PL-3 TO MISSISSIPPI RIVER FUEL CORPORATION ADJUSTING COST OF GAS PURCHASED BY UNITED GAS PIPE LINE COMPANY IN THE MONROE, SHREVEPORT AND DALLAS DISTRICTS

| | |
|---|---|
| Annual Volume | 73,950,800 Mcf |
| Peak Day Volume | 202,939 Mcf |
| Transmission Costs | |
| Commodity | $ 934,886 |
| Demand | 594,002 |
| Other—120 Meter Units | 5,789 |
| | $1,534,677 |
| Production Costs | 6,136,622 |
| Total Cost of Service PL-3 | $7,671,299 |

COMPARISON WITH EXHIBITS 79 AND 97

| | Amount | Amount in Excess of Above Cost of Service |
|---|---|---|
| Staff Ex. 79— | | |
| Revenues at Trial Rates | $9,218,525 | $1,547,226 |
| MRFC Ex. 97—PL-3 | 8,531,459 | 860,160 |

UNITED GAS PIPE LINE COMPANY

## CALCULATION OF UNIT COST OF TRANSMISSION AND PRODUCTION—CENTRAL RATE ZONE EXCLUDING GAS TRANSPORTED FOR OTHERS AND GAS TRANSPORTED THROUGH LINE L-129

| | Annual Volume | Peak Day | Meter Units | Transmission Costs | | | |
|---|---|---|---|---|---|---|---|
| | | | | Total Cost | Demand | Commodity | Other |
| Total Transmission | 457,492,319 | 1,498,456 | 6,317 | $10,732,125 | $4,516,683 | $5,909,921 | $305,521 |
| Less: | | | | | | | |
| Gas Transported for Others | 89,772,057 | 256,994 | 300 | 1,529,705 | 609,212 | 905,256 | 15,237 |
| Gas Transported Through Line L-129 | 98,105,119 | 324,156 | | 2,818,238 | 1,222,068 | 1,596,170 | |
| Balance—Cost of Transmission | 269,615,143 | 917,406 | 6,017 | 6,384,182 | 2,685,403 | 3,408,495 | 290,284 |
| Transmission Unit Cost | | | | | $2.927 | $.012642 | $48.24 |

| | |
|---|---|
| Production Costs—Central Rate Zone Adjusted to eliminate increases in prices paid Union Producing as set forth in Exhibits 1 and 1A | |
| Total Production Costs—Sheet 14 of Exhibit 78A | $26,148,616 |
| Less: Increases in prices paid Union Producing in Monroe, Shreveport & Dallas Districts | 3,214,610 |
| Adjusted Production Costs | $22,934,006 |
| Annual Volume of Gas Sold from Production in the Central Rate Zone—Exhibit 78A, Sheet 10, Line 6 | 276,371,476 |
| Unit Cost of Production —Per MCF | $.0829825 |

## CALCULATION OF INCREASED PRICES PAID UNION PRODUCING COMPANY BY UNITED GAS PIPE LINE COMPANY IN THE MONROE, SHREVEPORT AND DALLAS DISTRICTS AS INCLUDED IN EXHIBIT 82

| | Volumes MMcf 14.9# (1) | RATE Exhibit No. (2) | Price ¢/Mcf (3) | Pressure Base psia (4) | Price at 14.9# P.B. ¢/Mcf (5) | Commodity Amount Col. 1 x Col. 5 (6) | Allowed Per Staff Exhibits Price ¢/Mcf (7) | Allowed Per Staff Exhibits Amount (8) | Decrease in Gas Costs Col. (8) — Col. (6) (9) |
|---|---|---|---|---|---|---|---|---|---|
| Monroe District | | | | | | | | | |
| *Louisiana* | | | | | | | | | |
| Floyd Field—Ex. 87 | 840 | 100 | 3.0 | 16.7 | 2.677 | $ 22,487 | 3.569 | $ 29,980 | $ 7,493 |
| Lisbon—Ex. 87 | 3,381 | 101 | 3.0 | 16.7 | 2.677 | 90,509 | 6.692 | 226,257 | 135,748 |
| Monroe—Ex. 87 | 22,816 | 101 | 3.0 | 16.7 | 2.677 | 610,784 | 3.569 | 814,303 | 203,519 |
| | 27,037 | | | | | 723,780 | | 1,070,540 | 346,760 |
| Shreveport District—Ex. 88 | | | | | | | | | |
| *Louisiana* | | | | | | | | | |
| Cotton Valley | 290 | 106 | 6.0 | 16.7 | 5.353 | 15,524 | 9.662 | 28,020 | 12,496 |
| Greenwood (Waskom) | 505 | 106 | | | 8.429 | 42,566 | 8.429 | 42,566 | — |
| Lake Bistineau | 1,387 | 102 | 2.25 | 16.7 | 2.007 | 27,837 | 5.130 | 71,153 | 43,316 |
| Rodessa | 2,106 | 102 | 2.5 | 16.7 | 2.231 | 46,985 | 4.461 | 93,949 | 46,964 |
| Sibley | 1,540 | 103 | 3.0 | 16.7 | 2.677 | 41,226 | 5.799 | 89,305 | 48,079 |
| Sligo | 29,017 [1] | 103 | 4.0 | 16.7 | 3.569 | 1,035,617 | 5.799 | 1,682,696 | 647,079 |
| Sugar Creek | 767 | 106 | | | 7.934 | 60,854 | 7.934 | 60,854 | — |
| *Texas* | | | | | | | | | |
| Bethany | 6,519 [2] | 104, 105 | 6.0 | 16.7 | 5.353 | 348,962 | 8.645 | 563,568 | 214,606 |
| Rodessa | 3,261 | 102 | 2.5 | 16.7 | 2.231 | 72,753 | 4.461 | 145,473 | 72,720 |
| Waskom | 723 | 106 | 4.0 | 16.7 | 3.569 | 25,804 | 8.645 | 62,503 | 36,699 |
| | 46,115 | | | | | 1,718,128 | | 2,840,087 | 1,121,959 |
| Dallas District—Ex. 83A | | | | | | | | | |
| Carthage | 29,427 | 107 | 4.0 | 16.7 | 3.569 | 1,050,250 | 8.645 | 2,543,965 | 1,493,715 |
| N. Jacksonville | 97 | 107 | | | 5.799 | 5,625 | 5.799 | 5,625 | — |
| Joaquin, Louisiana | 1,770 | 107 | 4.0 | 16.7 | 3.569 | 63,171 | 8.645 | 153,017 | 89,846 |
| Joaquin, Texas | 548 | 107 | 3.0 | 16.7 | 2.677 | 14,670 | 8.645 | 47,375 | 32,705 |
| Willow Springs, Texas | 2,172 | 107 | 3.0 | 16.7 | 2.677 | 58,144 | 8.645 | 187,769 | 129,625 |
| | 34,014 | | | | | 1,191,860 | | 2,937,751 | 1,745,891 |
| Grand Total | 107,166 | | | | | $3,633,768 | | $6,848,378 | $3,214,610 |

[1] Adjusted in accordance with Exhibit 82.

[2] Adjusted in accordance with Exhibit 82 on a pro-rata basis.

**Hearing Exhibit No. 164**

EFFECT OF REDUCING PRICES PAID UNION PRODUCING COMPANY IN SAN ANTONIO AND HOUSTON DISTRICTS ON COST OF SERVICE UNDER RATE SCHEDULE PL-2 TO MISSISSIPPI RIVER FUEL CORPORATION

| | | |
|---|---|---|
| Production Commodity Cost—Ex. 78A, Page 22 | $39,695,357 | |
| Less: Increased Prices Paid Union Producing in San Antonio and Houston Districts | 1,547,291 | |
| Adjusted Commodity Costs | $38,148,066 | |
| Annual Volume—Ex. 78A, Page 22 | 441,805,935 | |
| Adjusted Average Rate | $.086346 | |
| Average Rate—Ex. 78A, Page 22 | $.089848 | |
| Reduction in Production Commodity Rate Per Mcf | $.003502 | |
| Annual Volume to Mississippi Under PL-2 | 39,751,128 Mcf | |
| Mississippi's Cost of Service PL-2—Ex. 96 | | $6,118,387 |
| Less: Reduction in Production Commodity Cost from Ex. 96 | 39,751,128 Mcf x $.003502 | 139,208 |
| Adjusted Cost of Service to Mississippi River Fuel Under Rate Schedule PL-2 | | $5,979,179 |

Hearing Ex. No. 165

## Calculation of Increased Prices Paid Union Producing Company by United Gas Pipe Line Company in the Houston and San Antonio Districts as Included in Exhibit 82

| | Volumes MMcf 14.9# | RATE | | | | Commodity Amount Col. 1 x Col. 5 | Allowed Per Staff Exhibits | | Decrease Col. (8) — Col. (6) |
|---|---|---|---|---|---|---|---|---|---|
| | | Exhibit No. | Price ¢/Mcf | Pressure Base psia | Price at 14.9# P.B. ¢/Mcf | | Price ¢/Mcf | Amount | |
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
| **Houston District—84B** | | | | | | | | | |
| Durkee Field (Natural) | 604 | 110 | 5.0 | 16.7 | 4.461 | $ 26,944 | 9.154 | $ 55,290 | $ 28,346 |
| Durkee Field (Casinghead) | 580 | 110 | 5.0 | 16.7 | 4.461 | 25,874 | 9.154 | 53,100 | 27,226 |
| Fairbanks (Plant) | 5,456 | 110 | 5.0 | 16.7 | 4.461 | 243,392 | 10.171 | 554,930 | 311,538 |
| Fairbanks (Wells) | 706 | 110 | 3.0 | 16.7 | 2.677 | 18,900 | 9.154 | 64,623 | 45,723 |
| Greta—Tom O'Conner | 8,316 | 110 | 4.0 | 16.7 | 3.569 | 296,798 | 6.103 | 507,525 | 210,727 |
| E. McFaddin (Natural) | 341 | 110 | 3.5 | 16.7 | 3.123 | 10,649 | 5.799 | 19,778 | 9,129 |
| E. McFaddin (Casinghead) | 322 | 110 | 3.5 | 16.7 | 3.123 | 10,056 | 5.799 | 18,676 | 8,620 |
| Needville | 837 | 110 | 5.0 | 16.7 | 4.461 | 37,339 | 6.103 | 51,081 | 13,742 |
| Refugio | 365 | 110 | 4.0 | 16.7 | 3.569 | 13,027 | 5.353 | 19,536 | 6,509 |
| Sealy | 766 | 110 | 6.0 | 16.7 | 5.353 | 41,004 | 9.154 | 70,119 | 29,115 |
| Spanish Camp | 974 | 110 | 5.0 | 16.7 | 4.461 | 43,450 | 6.103 | 59,445 | 15,995 |
| Total | 19,267 | | | | | 767,433 | | 1,474,103 | 706,670 |
| **San Antonio** | | | | | | | | | |
| Agua Dulce—Ex. 85B | 37,696 | 108 | 3.5 | 16.7 | 3.123 | 1,177,246 | 5.353 | 2,017,867 | 840,621 |
| Grand Total | 56,963 | | | | | $1,944,679 | | $3,491,970 | $1,547,291 |

6579

**Hearing Exhibit No. 166**

Sheet 1 of 3

*Basis for Normalizing Sales Volumes:*

*Texas Eastern at Longview, Texas*

Contract demand: 142,700 Mcf at 14.9 Psia, Deviated
142,700 × 365 = 52,085,500 Mcf Annual Volume
142,700 Mcf used as coincidental peak day volume

Texas Eastern's take during early 1953 was at 100% Load Factor.

*Texas Gas Transmission at Guthrie, Louisiana*

Used actual
Sale of Monroe Field gas—Limited supply.

*Mississippi River at Perryville, Louisiana*

Contract Demand: 151,260 Mcf at 14.9 Psia., Deviated
151,260 × 365 × 72% = 39,751,128 Mcf Annual Volume
150,000 Mcf used at Coincidental Peak Day Volume

Required to take or pay for 72% of contract demand.

6580

Sheet 2 of 3

*Mississippi River at Perryville, Louisiana*

Contract Demand: 202,605 Mcf at 14.9 Psia Deviated
202,605 × 365 = 73,950,800 Mcf Annual Volume
202,939 used as Coincidental Peak Day Volume

During early part of 1953 Mississippi River was taking gas at about 100 % Load Factor.

*Southern Natural Gas Co. at Perryville & West Carroll, Louisiana*

Selected Demand: 65,546 Mcf at 14.9 Psia Deviated
65,546 × 365 = 23,829,500 Mcf Annual Volume
68,422 used as Coincidental Peak Day Volume

During early part of 1953 Southern Natural was taking gas at about 100% Load Factor.

*Texas Gas Transmission Corp. at Guthrie, Lisbon & Sharron, Louisiana*

Contract Demand: 201,680 Mcf at 14.9 Psia., Deviated
201,680 × 365 × 75% = 55,209,350 Mcf Annual Volume
201,680 used as Coincidental peak day Volume

Required to take or pay for 72% of Contract Demand.

**6581**

Sheet 3 of 3

*Southern Natural Gas Company at Kosciusko, Mississippi*

Contract Demand: 100,840 Mcf at 14.9 Psia, Deviated
100,840 × 365 × 72% = 26,500,490 Mcf Annual Volume
100,839 Mcf used as Coincidental Peak Day Volume

Required to take or pay for 72% of contract demand.

*Texas Eastern Transmission Corp. at Kosciusko, Mississippi*

Contract Demand: 390,250 Mcf at 14.9 Psia, Deviated
390,250 × 365 × 97% = 138,851,467 Mcf Annual Volume

Texas Eastern's take during early 1953 was at about 97% Load Factor.

*Lone Star Gas Company, Palestine, Texas*

Sale to Lone Star at Palestine discontinued in 1952.

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**Hearing Exhibit No. 166 (continued)**

Sheet 1 of 1

UNITED GAS PIPE LINE COMPANY

## Summary of System Sales Coincidental Peak Day Volumes by Districts, Excl. Wichita Falls Dist.

### Year 1952

### (Volume Stated at 14.9 Psia., Deviated)

| *Direct Sales* | Actual | Adjustment to Normalize | Adjusted |
|---|---|---|---|
| Beaumont District | 268,085 | — | 268,085 |
| Dallas District | 154,059 | — | 154,059 |
| Houston District | 341,669 | — | 341,669 |
| Jackson Dist., Excl. N. W. Miss. Area | 137,534 | — | 137,534 |
| Monroe District | 91,422 | — | 91,422 |
| N. W. Miss. Area | — | — | — |
| New Orleans Dist. # 5 (Net) | 88,222 | — | 88,222 |
| New Orleans Dist. # 6 | 14 | — | 14 |
| San Antonio District | 33,084 | — | 33,084 |
| Shreveport District | 44,106 | — | 44,106 |
| Southwest Louisiana | 94,311 | — | 94,311 |
| Total Direct Sales | 1,252,506 | — | 1,252,506 |
| *Pipe Line Sales* | | | |
| Dallas District | 106,749 | 35,951 | 142,700 |
| Houston District | 5,956 | — | 5,956 |
| Jackson Dist., Excl. N. W. Miss. Area | 390,392 | 100,839 | 491,231 |
| Monroe Dist. | 550,835 | 86,434 | 637,269 |
| New Orleans Dist. # 5 (Net) | 6,652 | — | 6,652 |
| Total Pipe Line Sales | 1,060,584 | 223,224 | 1,283,808 |
| *Town Border Sales* | | | |
| Beaumont District | 60,451 | — | 60,451 |
| Dallas District | 69,581 | (4,141) | 65,440 |
| Houston District | 158,370 | — | 158,370 |
| Jackson Dist., Excl. N. W. Miss. Area | 332,092 | — | 332,092 |
| Monroe District | 27,649 | — | 27,649 |
| N. W. Miss. Area | 7,050 | — | 7,050 |
| New Orleans Dist. # 5 (Net) | 224,378 | — | 224,378 |
| New Orleans Dist. # 6 | 91 | — | 91 |
| San Antonio District | 191,608 | — | 191,608 |
| Shreveport District | 41,399 | — | 41,399 |
| Southwest Louisiana District | 73,876 | — | 73,876 |
| Total Town Border Sales | 1,186,545 | (4,141) | 1,182,404 |
| Total Sales, Excl. Wichita Falls Dist. | 3,499,635 | 219,083 | 3,718,718 |

UNITED GAS PIPE LINE COMPANY
SUMMARY OF ANNUAL SALES VOLUMES BY DISTRICT, EXCL. WICHITA FALL DISTRICT—Year 1952

| | Mcf at Cont. Pres. Base | | | | Mcf at 14.9 Psia., Deviated | | |
|---|---|---|---|---|---|---|---|
| | Per Books | Prior Year Adjustment | Actual Billing Adjustment | Adjustment to Correct to 14.9 Psia., Deviated | Actual | Adjustment to Normalize | Adjusted |
| *Direct Sales* | | | | | | | |
| Beaumont District | 76,461,527 | — | — | 1,449,079 | 77,910,606 | — | 77,910,606 |
| Dallas District | 51,019,325 | (578) | (24,331) | (402,877) | 50,591,539 | — | 50,591,539 |
| Houston District | 99,978,548 | 1,368 | — | 552,876 | 100,532,792 | — | 100,532,792 |
| Jackson Dist., Excl. N. W. Miss. Area | 39,411,035 | 123 | — | 548,524 | 39,959,682 | (450) | 39,959,232 |
| Monroe District | 33,567,217 | — | — | 637,236 | 34,204,453 | — | 34,204,453 |
| N. W. Miss. Area | — | — | — | — | — | — | — |
| New Orleans Dist. # 5 (Net) | 19,154,484 | 75 | 3,279 | 438,063 | 19,595,901 | — | 19,595,901 |
| New Orleans Dist. # 6 | 72,683 | — | — | 6 | 72,689 | — | 72,689 |
| San Antonio Dist. | 11,041,448 | — | (2,844) | 20,233 | 11,058,837 | — | 11,058,837 |
| Shreveport Dist. | 13,347,233 | 38 | — | (15,832) | 13,331,439 | — | 13,331,439 |
| Southwest Louisiana Dist. | 23,799,755 | 303 | — | 475,482 | 24,275,540 | — | 24,275,540 |
| Total Direct Sales | 367,853,255 | 1,329 | (23,896) | 3,702,790 | 371,533,478 | (450) | 371,533,028 |
| *Pipe Line Sales* | | | | | | | |
| Dallas District | 34,532,745 | — | — | 7,113,868 | 41,646,613 | 10,439,620 | 52,086,233 |
| Houston District | 173,787 | — | — | 8,465 | 182,252 | — | 182,252 |
| Jackson Dist., Excl. N. W. Miss. Area | 59,284,294 | — | — | 496,178 | 59,780,472 | 105,571,454 | 165,351,926 |
| Monroe District | 130,877,228 | — | 60,141 | 5,237,810 | 136,175,179 | 61,296,803 | 197,471,982 |
| New Orleans Dist. # 5 (Net) | 1,382,537 | — | — | 51,759 | 1,434,296 | — | 1,434,296 |
| Total Pipe Line Sales | 226,250,591 | — | 60,141 | 12,908,080 | 259,218,812 | 177,307,877 | 416,526,689 |
| *Town Border Sales* | | | | | | | |
| Beaumont District | 5,832,443 | — | — | 138,860 | 5,971,303 | — | 5,971,303 |
| Dallas District | 10,793,027 | (968) | (2,561) | 59,316 | 10,848,814 | (571,260) | 10,277,554 |
| Houston District | 31,319,612 | — | — | 1,112,301 | 32,431,913 | — | 32,431,913 |
| Jackson Dist., Excl. N. W. Miss. Area | 71,116,950 | — | (19,575) | 834,855 | 71,932,230 | 16 | 71,932,246 |
| Monroe District | 4,128,368 | — | 22,164 | 91,552 | 4,242,084 | — | 4,242,084 |
| N. W. Miss. Area | 1,013,690 | — | — | 1,323 | 1,015,013 | — | 1,015,013 |
| New Orleans Dist. # 5 (Net) | 44,321,023 | — | (52,628) | 904,133 | 45,172,528 | — | 45,172,528 |
| New Orleans Dist. # 6 | 9,945 | — | — | 195 | 10,140 | — | 10,140 |
| San Antonio District | 37,611,210 | — | 25,715 | 155,578 | 37,792,503 | — | 37,792,503 |
| Shreveport District | 8,983,619 | — | 197,718 | 70,652 | 9,251,989 | — | 9,251,989 |
| Southwest Louisiana District | 9,581,412 | — | — | 382,082 | 9,963,494 | — | 9,963,494 |
| Total Town Border Sales | 224,711,299 | (968) | 170,833 | 3,750,847 | 228,632,011 | (571,244) | 228,060,767 |
| Total Sales, Excl. Wichita Falls Dist. | 818,815,145 | 361 | 207,078 | 20,361,717 | 859,384,301 | 176,736,183 | 1,016,120,484 |

( ) Indicates red.

Hearing Exhibit No. 106 (continued)

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UNITED GAS PIPE LINE COMPANY

## DETAILS OF ADJUSTMENTS TO NORMALIZE 1952 SALES VOLUMES

### Mcf at 14.9 Psia., Deviated

| | Annual Volumes | | | Coin. Peak Day Volumes | | |
|---|---|---|---|---|---|---|
| | Actual | Adjustment to Normalize | Adjusted | Actual | Adjustment to Normalize | Adjusted |
| *Pipe Line Sales* | | | | | | |
| Texas Eastern Transmission Corp. Near Longview, Dallas Dist., Tex. | 41,645,880 | 10,439,620 | 52,085,500 | 106,749 | 35,951 | 142,700 |
| Lone Star Gas Company Near Dallas, Dallas Dist., Tex. | 733 | — | 733 | — | — | — |
| Total Dallas Dist. | 41,646,613 | 10,439,620 | 52,086,233 | 106,749 | 35,951 | 142,700 |
| Texas Gas Transmission Corp. Guthrie Sta., Monroe Dist., La. (Field Sale) | 4,731,204 | — | 4,731,204 | 14,228 | — | 14,228 |
| Mississippi River Fuel Corp. Perryville Sta., Monroe Dist., La. | 7,960,828 | 31,790,300 | 39,751,128 | 110,712 | 39,288 | 150,000 |
| Mississippi River Fuel Corp. Perryville Sta., Monroe Dist., La. | 70,910,530 | 2,040,270 | 72,950,800 | 202,939 | — | 202,939 |
| Southern Natural Gas Company Perryville & W. Carroll, Monroe Dist., La. | 35,267,742 | (11,438,242) | 23,829,500 | 68,422 | — | 68,422 |
| Texas Gas Transmission Corp. Guthrie, Lisbon & Sharron, Monroe Dist., La. | 17,304,875 | 37,904,475 | 55,209,350 | 154,534 | 47,146 | 201,680 |
| Total Monroe Dist. | 136,175,179 | 61,296,803 | 197,471,982 | 550,835 | 86,434 | 637,269 |

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UNITED GAS PIPE LINE COMPANY

## DETAILS OF ADJUSTMENTS TO NORMALIZE 1952 SALES VOLUMES

### Mcf at 14.9 Psia., Deviated

| | Annual Volumes | | | Coin. Peak Day Volumes | | |
|---|---|---|---|---|---|---|
| | Actual | Adjustment to Normalize | Adjusted | Actual | Adjustment to Normalize | Adjusted |
| *Pipe Line Sales* (Cont'd) | | | | | | |
| Southern Natural Gas Company Near Kosciusko, Jackson Dist., Miss. | — | 26,500,490 | 26,500,490 | — | 100,839 | 100,839 |
| Texas Eastern Transmission Corp. Near Kosciusko, Jackson Dist., Miss. | 59,780,472 | 79,070,964 | 138,851,436 | 390,392 | — | 390,392 |
| Total Jackson Dist. | 59,780,472 | 105,571,454 | 165,351,956 | 390,392 | 100,839 | 491,231 |
| *Town Border Sales* | | | | | | |
| Lone Star Gas Company Palestine T.B., Dallas Dist. Tex. | 571,257 | (571,257) | — | 4,141 | (4,141) | — |
| Other Town Border Sales, Dallas Dist. | 10,277,557 | (3) | 10,277,554 | 14,534 | — | 14,534 |
| Total Dallas District | 10,848,814 | (571,260) | 10,277,554 | 18,675 | (4,141) | 14,534 |

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(6585)

(6586)

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Item No. R

UNITED GAS PIPE LINE COMPANY
Rate Schedule FPC No. 9
Effective Date--November 21, 1929
Filing Date—August 22, 1938

UNITED GAS PIPE LINE COMPANY

Serving

MISSISSIPPI RIVER FUEL CORPORATION

DESCRIPTION OF SERVICE:

Sale of natural gas in the Monroe, Louisiana Gas Field, as set out in contract attached hereto, for transportation and resale in interstate commerce (as defined in the Natural Gas Act) for ultimate public consumption for domestic, commercial, industrial and other uses.

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Received August 22, 1938

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CONTRACT NO. L 7-A
AGREEMENT

between

MOODY-SEAGRAVES GAS COMPANY, INCORPORATED

and

MISSISSIPPI RIVER FUEL CORPORATION

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THIS AGREEMENT, made as of the first day of August, 1929, between MOODY-SEAGRAVES GAS COMPANY, INCORPORATED, a corporation of the State of Louisiana, which corporation is hereinafter referred to as "Seller", and MISSISSIPPI RIVER FUEL CORPORATION, a corporation of the

State of Delaware, which corporation is hereinafter referred to as "Buyer".

WHEREAS, Buyer is constructing a gas pipe line from the Monroe Gas Field and the Richland Gas Field in the State of Louisiana to St. Louis, Missouri and the St. Louis district, (said city and district being hereinafter referred to "the St. Louis District"); and

WHEREAS, Buyer has made or is about to make contracts with the SOUTHERN CARBON COMPANY, UNITED CARBON COMPANY, INDUSTRIAL GAS COMPANY, INTERSTATE NATURAL GAS COMPANY, INCORPORATED, HOPE PRODUCING COMPANY, and THE PALMER CORPORATION OF LOUISIANA, which corporations are hereinafter collectively referred to as the "Vendors", for the supply of ninety per cent. (90%) of the requirements of said pipe line as defined in paragraph numbered IV hereof; and

WHEREAS, Greenwood Production Company, a Louisiana corporation, owns or has leases permitting it to produce gas from approximately twenty thousand, sixty-five (20,065) acres of land in said Monroe Gas Field, which land is generally described as being located in Town-



ships Eighteen (18), Nineteen (19), Twenty (20), Twenty-one (21), Twenty-two (22) and Twenty-three (23), Ranges Two (2), Three (3), Four (4), Five (5), Seven (7) and Nine (9) East, Richland Production Company, a Delaware corporation, owns or has leases permitting it to produce gas from approximately eleven thousand, seven hundred forty-eight (11,748) acres of land in said Richland Gas Field, which land is generally described as being located in Townships Fourteen (14),

Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19) and Twenty (20), Ranges Four (4), Five (5), Six (6), Seven (7), Nine (9) and Ten (10) East, said Greenwood Production Company and Richland Production Company are subsidiary companies, all the presently outstanding capital stock of which is owned or controlled by Seller and are and will be operated by Seller, Seller has entered into contracts with said Greenwood Production Company and said Richland Production Company, respectively, for the purchase from them of gas produced or that may be produced from their above described respective gas lands, which said lands are colored lavender and cross-hatched on the attached map, and which contracts are entitled to priority over all other contracts for sale of gas from said acreage, Seller has entered into contracts for the purchase of gas from other producers in said fields, and Seller desires to enter into a contract with Buyer for the sale of gas for said pipe line;

Now, Therefore, this Agreement witnesseth: That in consideration of the mutual covenants herein contained, the parties do hereby covenant and agree as follows:

I. Buyer agrees to construct said pipe line to the St. Louis District and to commence taking deliveries of



gas hereunder as soon as the construction of its said gas pipe line shall have been completed, but in any event not later than January 1, 1930.

II. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and receive from Seller gas in the

amounts, for the prices and on the terms and conditions hereinafter expressed.

III. Seller agrees (a) that the recital of approximate acreage and the description thereof contained in the fourth preamble of this agreement and shown colored lavender and cross-hatched on the attached map, and the statement in said preamble in re gas purchase contracts have reference to such approximate acreage and contracts as of or about November 16, 1928, (b) that as of the date of this agreement said approximate acreage is in amount not less than, and that the location thereof and the status of said gas purchase contracts are substantially, as described in said preamble, and (c) that on or before the first day of October, 1929, Seller will execute and deliver a supplemental agreement with Buyer (1) describing and listing the respective approximate acreage, and the aggregate approximate acreage, of the lands in said Monroe Gas Field and said Richland Gas Field, respectively, as of the date of this agreement owned by Seller or in respect of which it has leases permitting it to produce, or contracts with said Greenwood Production Company and/or said Richland Production Company for the purchase of, gas, (2) describing and listing its contracts for the purchase of gas from other producers in said fields, and (3) providing that said description and list of said acreage and contracts shall be deemed incorporated in, and a part of, this agreement and substituted for and in lieu of the more general de-



scription of said acreage and contracts contained in said preamble.

IV. The quantity of gas which Buyer shall purchase and receive from Seller and Seller shall sell and deliver

to Buyer shall be ten per cent. (10%) of the requirements of said pipe line. The requirements of said pipe line are hereby defined to mean an amount determined by adding: (a) all the gas which may be taken into said pipe line at any point, whether such gas shall be transported to or sold in the St. Louis District, points beyond said District, or points intermediate to said District and the southerly terminus of said pipe line; and (b) all the gas which may be taken into and/or transported through any lateral or extension of said pipe line; and (c) all the gas lost in transit; and (d) all the gas used in the operation of compressor stations.

V. Nothing in this agreement contained shall obligate Seller (a) to sell and deliver more gas than it has currently available for delivery as provided in paragraphs numbered XVII, XVIII and XX hereof and/or (b) except as provided in paragraph numbered VII hereof, to sell and deliver in any hour more than 10% of the requirements of said pipe line, as defined in paragraph numbered IV hereof, during such hour, all subject to operating variations as provided in paragraph numbered XV hereof. Nor shall Buyer be bound to take from Seller in any month a greater proportion of the requirements of said pipe line than Seller is able to supply during the hour of highest demand in said month.

VI. If Seller shall at any time or times be unable for any reason to deliver the full amount it hereby agrees to deliver, Buyer shall give written notice of such deficiency to Seller, but shall nevertheless (subject to the



provisions of the last sentence of paragraph numbered V hereof) continue to take from Seller such amount of gas as Seller is able to deliver. Seller shall have the

right at any time within a period of one hundred eighty (180) consecutive days from the date on which such notice of deficiency is given, but subject to the provisions of the last sentence of paragraph numbered V hereof) to resume delivery of the full amount it hereby agrees to deliver, but if within said period of one hundred eighty (180) consecutive days Seller shall not be able to resume delivery and actually resume delivery of the full amount it hereby agrees to deliver, Buyer shall not be bound thereafter to take from Seller more than the daily average volume that Seller was in condition to deliver and tendered to Buyer during the last ninety (90) days of such period, provided, however, that in the event such deficiency at any time during the continuance thereof shall not have been supplied and made good as in paragraph numbered VII provided, Seller shall have no further right or privilege to resume delivery hereunder of the amount it hereby agrees to deliver beyond what it had been supplying during said last ninety (90) days of such period of deficiency, but Buyer may require Seller to resume delivery of such gas as Seller has available for delivery.

VII. Buyer is entering into contracts with the Vendors hereinbefore named for the purchase from each of such Vendors of a specified percentage of the requirements of said pipe line, as defined in paragraph numbered IV hereof, which said contracts are in form and tenor (except as to percentages of said requirements) substantially indentical with this agreement. In case any of such Vendors shall fail, refuse or be unable at any time and from time to time to deliver its or their respective

and Seller, during the continuance of such failure, refusal or inability, will furnish and deliver and Buyer will take and pay for that part of said deficiency represented by a fraction which shall have as its numerator the percentage of the requirements of the pipe line to be supplied by Seller under paragraph numbered IV hereof and have as its denominator the sum of the percentages of the said requirements of said pipe line to be supplied under their respective contracts by all of said Vendors and Seller not then failing, refusing or unable to furnish their respective contract percentages, subject, however, to the right of any of such Vendors and of Seller failing, but only because actually unable hereunder to furnish its said respective contract percentage, to resume delivery of its full contract percentage within the period of one hundred eighty (180) days as provided in paragraph numbered VI of its said agreement; provided, however, that the agreement in this paragraph numbered VII contained is subject to the condition that at the time it becomes operative Seller shall have immediately available a sufficient supply of gas to enable it to deliver such additional volume.

VIII. If the Vendors and Seller or any thereof shall not have available or shall not be obligated to supply gas sufficient to supply the requirements of said pipe line, as defined in paragraph numbered IV hereof, then and in that event, but only then and in that event, Buyer shall be at liberty to purchase or obtain, at its own cost and expense, from any of the fields herein mentioned or from any source such gas as may be required to supply such deficiency, but Buyer may require Seller to resume delivery of such gas hereunder as Seller can deliver.

IX. The price per thousand cubic feet to be paid by Buyer to Seller shall be as follows, beginning with the day on which deliveries shall commence hereunder:

For the first three (3) years, five cents (5¢);
For the next two (2) years, six cents (6¢);
For the next five (5) years, seven and six-tenths cents (7.6¢);
For the next five (5) years, eight cents (8¢).

For the last five (5) years, the price shall be determined from year to year at the beginning of each year by mutual agreement or arbitration, but shall not be less than eight cents (8¢). If the parties are unable to agree upon such price for any year, Seller shall appoint one arbitrator and Buyer shall appoint one and the two arbitrators shall select a third. The decision of a majority of the arbitrators shall be final. One-half of the expense of the arbitration shall be borne by Buyer and one-half by Seller. The arbitrators shall base their decision upon the prevailing market price for gas deliverable during such year at central points in the Monroe Gas Field and the Richland Gas Field, provided, however, the arbitrators shall not fix such price at less than eight cents (8¢) per thousand cubic feet. In the event of the failure or refusal of either party to appoint an arbitrator within thirty (30) days after notice in writing from the other, an arbitrator on behalf of said party so refusing or neglecting may be appointed by any person who is a judge of any Federal Court in either District of Louisiana.

X. The unit of measurement for the gas deliverable under this agreement shall be one thousand (1,000) cubic feet of gas at a base temperature of sixty (60) degrees Fahrenheit and at a base pressure of eight (8)

ounces gauge pressure above fourteen and four-tenths (14.4) pounds absolute atmospheric pressure, and the readings and registrations of the metering equipment herein provided for shall be computed into such units. For the purpose of measurement, the gas deliverable hereunder shall be assumed to obey Boyle's Law, and the average absolute atmospheric (barometric) pressure shall be assumed to be fourteen and four-tenths (14.4) pounds to the square inch, irrespective of the actual elevation or location of the delivery points above sea level or of variations in such barometric pressure from time to time. For meters of the orifice type, the following factors shall be given due consideration, viz.:—

(a) The temperature of the gas flowing through Buyer's meters shall be obtained by the use of a recording thermometer so installed that it may properly record the temperature of the gas flowing through the meter. The average temperature recorded each twenty-four (24) hour day shall be used in computing measurements.

(b) The specific gravity of the gas shall be determined monthly by joint tests on or as near the first of each calendar month as practicable. The method of test used shall be by Edward's Balance or by such other method as shall be agreed upon by the parties. Such test shall determine the specific gravity to be used in computations for the measurement of gas deliveries during such calendar month.

XI. Buyer will install and maintain in accurate repair, at the points of delivery hereinafter specified, orifice meters of ample size and type for the accurate measure-

ment of the gas supplied to it hereunder, with volume and pressure recording gauges, and will cause said meters to be read each day. The location of meters and the



method of setting meters shall be such as to prevent pulsations of compressors from interfering with accurate measurements. Should the meters be on the property of Seller, Seller grants to Buyer the right of free use of said premises and ingress and egress to such meters at all times for the purpose of installation, operation, repair and/or removal. The respective meters, meter readings and meter charts shall be at all reasonable times accessible to inspection and examination by Seller. The meters shall be calibrated at least once each month by and at the expense of Buyer but in the presence of Seller, if Seller so elects. Reading, calibration and adjustment of Buyer's meters and changing of charts shall be done only by Buyer, but all data with respect thereto shall at all times be available to Seller. If upon any test the percentage of inaccuracy shall be one per cent. (1%) or more, registrations thereof shall be corrected at the rate of such inaccuracy for any period which is definitely known and agreed upon, but in case the period is not definitely known and agreed upon then for a period extending back one-half (½) of the time elapsed since the last date of calibration. Following any test, metering equipment found inaccurate shall immediately be restored by Buyer as closely as possible to a condition of accuracy. If for any reason any meter is out of service and/or out of repair so that the amount of gas delivered cannot be ascertained or computed from the reading thereof, the gas delivered through the period such meter is out of service and/or out of repair shall be estimated and agreed

upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

(a) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation.

(b) By using the registration of Seller's check meter if installed and accurately registering.

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(c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately.

Seller may at its option and expense install and operate check meters to check Buyer's meters, but measurement of gas for the purposes of this contract shall be by Buyer's meters, except as hereinbefore provided. Check meters shall be of the orifice type and shall be subject at all reasonable times to inspection or examination by Buyer, but the reading, calibration and adjustment thereof and changing of charts shall be done only by Seller. Should any delivery point or points be located on the premises of Buyer, Buyer grants to Seller the right of free use of said premises and ingress and egress to such check meter at all times for purposes of installation, operation, repair and/or removal.

XII. Buyer shall render to Seller on or before the tenth day of each month a statement of the amount of gas delivered by Seller during the calendar month preceding and shall accompany said statement with the supporting charts, which charts shall be returned to Buyer after examination. Buyer agrees to make payment on

or before the twentieth day of each month for all gas delivered during the preceding calendar month. Should Buyer fail to pay any amount due to Seller when same is due, interest thereon shall accrue at the rate of six per cent. (6%) per annum from the date when such amount is due until the same is paid. If such failure to pay continues for sixty (60) days, Seller may suspend deliveries of gas hereunder but the exercise of such right shall be in addition to any other remedies available to Seller.

XIII. The points of delivery shall be (1) for gas to be delivered hereunder from the Monroe Gas Field, at a



receiving station in the Monroe Gas Field located at or near Perryville, Louisiana, on a tract or parcel of land containing 39 acres, more or less, in the Northeast corner of Section 24, Township 20 North, Range 4 East and (2) for gas to be delivered hereunder from the Richland Gas Field, at a receiving station in the Richland Gas Field located at or near Alto, Louisiana, on a tract or parcel of land containing 28.95 acres, more or less, in the Northeast corner of the W½ of SW¼ of Section 11, Township 16 North, Range 6 East; provided, however, that Seller and Vendors, jointly, shall have the right or privilege of designating by notice in writing to Buyer given at any time during the term hereof, one (1) additional point of delivery for gas to be delivered hereunder from the Monroe Gas Field. The volume of gas to be supplied by Seller shall be apportioned from time to time between said delivery points as Seller shall direct, each such apportionment to hold good for six (6) months following the time it becomes effective.

XIV. Buyer shall maintain at any delivery point in the Monroe Gas Field a pressure not exceeding two hundred (200) pounds per square inch, and at the delivery point in the Richland Gas Field a pressure not exceeding four hundred (400) pounds per square inch, and Seller agrees to make the contract deliveries against such respective pressures if and so long as the natural pressure of gas from its wells and/or gas purchase contracts will enable Seller to do so through its gathering lines as then installed.

In the event that said natural pressure shall be insufficient to enable Seller to make deliveries of gas as aforesaid against said pressure in said respective fields, then it will at all times make deliveries at the highest pressure which can be efficiently maintained from the natural pressure of gas from such wells and/or gas purchase contracts and at a pressure at least as high as that against



which Seller is making deliveries by means of the natural pressure of gas from such wells and/or gas purchase contracts to purchasers other than Buyer, due allowance being made for the distance from the wells from which deliveries are made to the point of delivery, and it is the duty of Buyer at its own cost and expense to install and operate such compressors in its compressing station as shall make up any deficiency in pressure over and above an intake pressure of fifty (50) pounds minimum to the square inch at said point or points of delivery. Seller shall not be required to install compressors. Buyer is not obligated to but may install compressors to take gas at an intake pressure of less than fifty (50) pounds to the square inch. However, Buyer shall take such reduced

quantities of gas as Seller can deliver at an intake pressure of fifty (50) pounds.

XV. It is agreed that at all times the hourly rate of delivery of gas, so far as operating conditions may be controlled, shall be the same percentage of the requirements of said line for such hour as is set forth to be supplied by Seller under the provisions of paragraphs numbered IV and VII hereof. Buyer agrees that it will cause its gas dispatcher to keep Seller informed each day of Buyer's estimated requirements for the succeeding day so that the percentages of deliveries may be equalized and adjusted day by day as nearly as operating conditions may be controlled for that purpose. Buyer further agrees from time to time, insofar as it is able to do so, to notify Seller of anticipated increases in the volume of sales from said pipe line, if the same are of a character likely to cause a material increase in Seller's hourly rate of delivery hereunder. Seller agrees to keep available at all reasonable times competent employees or agents to receive from Buyer the advices to be given pursuant hereto.



XVI. Seller warrants generally the title to all gas delivered hereunder and agrees to indemnify Buyer from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to said gas and/or to royalties or charges thereon.

Seller agrees to indemnify Buyer from all claims of the State of Louisiana to severance tax on said gas and/or to any other tax that may now or hereafter be imposed by said State upon the production of said gas or the operation of Seller's wells or gas properties.

XVII. Seller agrees to use due diligence in operating its gas wells and keeping its gathering lines and pipe lines in good repair and diligently to operate its gas acreage herein described and any gas acreage hereafter acquired in a skillful and methodical way, but Seller reserves the right to abandon any wells and/or to surrender or permit to lapse any leases, mineral rights and/or gas purchase contracts which in its judgment are deemed to be unproductive or without substantial value. Seller proposes to obtain gas for delivery hereunder from the lands and/or leases herein mentioned and/or from purchase contracts now owned by it and/or its subsidiary or affiliated corporations in said Monroe Gas Field and said Richland Gas Field and Seller agrees, subject to the priorities and preferences herein described, to supply gas from any lands and/or leases in the said Monroe Gas Field and the said Richland Gas Field hereafter acquired by it, but Seller shall not be obligated to acquire any additional lands, leases and/or gas purchase contracts for the purpose of supplying gas hereunder.

XVIII. The obligations of Seller hereunder are subject: (1) to the reservation of sufficient gas for drilling operations; (2) to the prior obligations of Seller under all contracts made before June 21, 1928; and (3) in respect of any lands and/or leases hereafter acquired by



Seller in said Monroe Gas Field and/or Richland Gas Field, to perform any contracts to which such lands and/or leases may be subject at the date of such acquisition.

Nothing in this agreement shall in any way restrict or abridge the right of Seller at any time to sell, transport and deliver gas to others than Buyer and/or to use

gas in making carbon black, provided, however, that Seller shall give gas to be delivered hereunder priority over the use of gas in making carbon black and provided, further, that Seller shall give gas to be delivered hereunder priority over gas to be delivered under any contract or arrangement, except as above stated.

XIX. The gas delivered by Seller to Buyer shall be natural gas as produced in its natural state from the wells, except that Seller reserves the right to extract or permit the extraction of the natural gas gasoline from said natural gas. Seller shall not subject said natural gas nor permit said natural gas to be subjected to any treatment in the extraction of natural gas gasoline or otherwise which shall substantially change the chemical composition of any of the component parts of said natural gas, permit or cause the admission of oxygen, or which will dilute said natural gas. Seller will not tender to Buyer any gas having, at the time of tender, a temperature in excess of ninety (90) degrees Fahrenheit.

XX. Seller shall not be liable for any damage or loss that may be occasioned by any failure, depletion, shortage or interruption in the production of gas wells, lands, leases and/or purchase contracts or any decline in natural pressure. In the event of either party hereto being rendered unable wholly or in part by *force majeure* to carry out its obligations under this agreement, other than to make payments of amounts due hereunder, it is agreed that on such party giving notice and full particulars of such *force majeure* in writing or by telegraph to the other party as soon as possible after the occur-

such *force majeure,* shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall so far as possible be remedied with all reasonable dispatch.

The term "*force majeure*" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraint of rulers and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of gas wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to overcome.

XXI. The term of this agreement shall be twenty (20) years commencing on the day when deliveries of gas shall begin hereunder.

XXII. Any notice hereunder shall be deemed to be duly given if in writing and either sent by post-paid registered mail addressed to the respective parties at the addresses stated below, or such other address as they shall respectively hereunder designate in writing, or personally delivered at said respective addresses:

Moody-Seagraves Gas Company, Incorporated, 13th Floor, Esperson Building, Houston, Texas

Mississippi River Fuel Corporation, Monroe, Louisiana

XXIII. As between the parties hereto, Seller shall be in control and possession of its gas deliverable hereunder and responsible for any damage or injury caused thereby until the same shall have been delivered to Buyer, after which delivery Buyer shall be deemed to be in exclusive control and possession thereof and responsible for any injury or damage.

XXIV. If either party shall fail to perform any of the covenants or obligations imposed upon it under and by virtue of this agreement (except where such failure shall be excused under the provisions of paragraph numbered XX hereof), then and in such event the other party may at its option terminate this agreement as to the party in default by proceeding as follows: The party not in default shall cause a written notice to be served on the party in default, stating specifically the cause for terminating this agreement and declaring it to be the intention of the party giving the notice to terminate the same; thereupon the party in default shall have thirty (30) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating the agreement, and if within said period of thirty (30) days the party in default does so remove and remedy said cause or causes and full indemnifies the party not in default for any and all consequences of such breach, then such notice shall be withdrawn and this agreement shall continue in full force and effect. In case the party in default does not so remedy and remove the cause or causes and/or does not indemnify the party giving the notice for any and all consequences of such breach, within said period of thirty (30) days, then this agreement shall become null and void from and after the

expiration of said period. Any cancellation of this agreement pursuant to the provisions of this paragraph shall



be without prejudice to the right of the party not in default to collect any amounts then due it and without waiver of any other remedy to which the party not in default may be entitled for violation of this agreement.

XXV. As used herein, the term "gas" denotes natural gas; "year" denoted a period of twelve (12) months ending on an anniversary of the first day of the calendar month in which deliveries of gas shall actually commence hereunder or the first day of the succeeding calendar month, whichever is nearer to the date on which deliveries actually commence hereunder; "month" denotes a calendar month; and "day" denotes a period of twenty-four (24) hours, commencing and ending at seven o'clock in the morning.

XXVI. To these presents came and appeared the aforesaid Greenwood Production Company and Richland Production Company, herein represented by their respective duly authorized officers, and declared that they take cognizance of this agreement, and in consideration of the premises and of the benefits enuring to them, respectively, to result from the sale by their parent corporation, Seller, of gas hereunder to be purchased from them by Seller, desire to join in and become parties to this agreement and hereby obligate themselves and their respective successors and/or assigns for the full and faithful performance of this agreement and of their obligations under any and all contracts heretofore or hereafter made by them, respectively, and/or their respective successors and/or assigns to furnish gas to Seller from said Monroe Gas Field and/or Richland Gas Field.

XXVII. This agreement shall bind and benefit the successors and assigns of the respective parties.

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In Witness Whereof, the parties hereto have caused these presents to be signed, sealed, attested and delivered as of the date first above written.

[CORPORATE SEAL OF MOODY-SEAGRAVES GAS COMPANY INCORPORATED]

Moody-Seagraves Gas Company,
Incorporated

By E. G. Diefenbach
Vice-President.

Attest:
J. F. Reed
Asst. Secretary.

[CORPORATE SEAL OF MISSISSIPPI RIVER FUEL CORPORATION]

Mississippi River Fuel Corportion
By Christy Payne
President.

Attest:
Reid L. Carr
Secretary

[CORPORATE SEAL OF GREENWOOD PRODUCTION COMPANY]

Greenwood Production Company
By E. G. Diefenbach
Vice-President.

Attest:
J. F. Reed
Asst. Secretary.

[CORPORATE SEAL OF RICHMOND PRODUCTION COMPANY]

Richland Production Company
By E. G. Diefenbach
Vice-President.

Attest:
J. F. Reed
Asst. Secretary.

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Received February 3, 1939

UNITED GAS PIPE LINE COMPANY
Supplement No. 2
Effective Date—December 3, 1930
Filing Date—February 3, 1939
to
Rate Schedule FPC No. 9

THIS AGREEMENT made this 3rd day of December, 1930, between Texas-Louisiana Production Corporation, a corporation of the State of Delaware, which corporation is hereinafter referred to as "Seller," and Mississippi River Fuel Corporation, a corporation of the State of Delaware, which corporation is hereinafter referred to as "Buyer,"

WITNESSETH:

WHEREAS heretofore, and as of the first day of August, 1929, Moody-Seagraves Gas Company, Incorporated, a corporation of the State of Louisiana, and Mississippi River Fuel Corporation entered into a certain contract wherein and whereby Moody-Seagraves Gas Company, Incorporated, agreed to sell and deliver and the Buyer agreed to purchase and receive ten per cent (10%) of the gas which the Buyer required for a pipe line it was then constructing from the Monroe Gas Field and the Richland Gas Field, in the State of Louisiana, to St. Louis, Missouri and the St. Louis District, said sale being for the price and under the terms, conditions and limitations set forth in said contract made and executed as of the first day of August, 1929, to which contract reference is hereby made; and

WHEREAS Texas-Louisiana Production Corporation has succeeded to all of the rights and obligations of Moody-Seagraves Gas Company, Incorporated, in and under the above mentioned contract of August 1, 1929; and

WHEREAS Buyer desires to purchase from the Louisiana Gas & Fuel Company and/or from the Crossett Lumber Company and/or its associates and/or assigns for transportation through a part of said pipe line and to a point at or near Crossett, Arkanses, a quantity of natural gas for sale to the Crossett Lumber Company, its associates and assigns; and

WHEREAS it is to the mutual advantage of the parties hereto that a part of the gas which is transported through Buyer's pipe line for sale and delivery to the Crossett Lumber Company, its associates or assigns, be not considered as a part of the requirements of said pipe line as defined in

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the contract between the parties hereto made as of the first day of August, 1929:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That in consideration of the mutual covenants herein contained and in consideration of the sum of Ten Dollars ($10.00) by each of the parties to the other paid, receipt whereof is hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

1. That the article marked "IV" of the contract between Moody-Seagraves Gas Company, Incorporated and Mississippi River Fuel Corporation, made as of the first day of August, 1929, which provides:

> "IV. The quantity of the gas which Buyer shall purchase and receive from Seller and Seller shall sell and deliver to Buyer shall be ten per cent (10%) of the requirements of said pipe line. The requirements of said pipe line are hereby defined to mean an amount determined by adding: (a) all the gas which may be taken into said pipe line at any point, whether such gas shall be transported to or sold in the St.

Louis District, points beyond said District, or points intermediate to said District and the southerly terminus of said pipe line; and (b) all the gas which may be taken into and/or transported through any lateral or extension of said pipe line; and (c) all the gas lost in transit; and (d) all the gas used in the operation of compressor stations."

be and the same is hereby amended so that the said Article IV shall read and provide as follows:

"IV. The quantity of the gas which Buyer shall purchase and receive from Seller and Seller shall sell and deliver to Buyer shall be ten per cent (10%) of the requirements of said pipe line. The requirements of said pipe line are hereby defined to mean an amount determined by adding: (a) all the gas which may be taken into said pipe line at any point, whether such gas shall be transported to or sold in the St. Louis District, points beyond said District, or points intermediate to said District and the southerly terminus of said pipe line; and (b) all the gas which may be taken into and/or transported through any lateral or extension of said pipe line; and (c) all the gas lost in transit; and (d) all the gas used in the operation of compressor stations, provided, however, that the requirements of said pipe line shall not be deemed to include an amount equal to One Hundred and Two Per Cent (102%) of the quantity of natural gas up to but not exceeding One Hundred and Two Per Cent (102%) of Five Million (5,000,000) cubic feet per day which the Buyer may sell to Crossett Lumber Company



under and by virtue of Article First, Paragraph (1), Classification (a) of a certain agreement between the Buyer and said Crossett Lumber Company made the 7th day of November, 1930 for use by the Crossett Lumber Company and/or the Chossett Timber and Development Company and/or their associates and assigns on their own lands or purchased by said com-

panies for resale by them or their associates or assigns for domestic and/or commercial use and consumption within the corporate limits of the Town of Crossett, Arkansas, as now existing or hereafter established, it being understood, however, that all other amounts sold by Buyer to Crossett Lumber Company under and by virtue of said contract shall be included in the requirements of said pipe line."

2. Except as herein modified and changed, the contract between Moody-Seagraves Gas Company, Incorporated, and Mississippi River Fuel Corporation, made as of the first day of August, 1929, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed, sealed, attested and delivered as of the date first above written.

TEXAS-LOUISIANA PRODUCTION CORPORATION

By (Sgd.) R. H. HARGROVE
Vice-President

Attest:

(Sgd.) GEO. D. FISER
Asst. Secretary

(SEAL)

MISSISSIPPI RIVER FUEL CORPORATION

By (Sgd.) CHRISTY PAYNE
President

Attest:

(Sgd.) REID L. CARR
Secretary

(SEAL)

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UNITED GAS PIPE LINE COMPANY
Supplement No. 7
Effective Date—October 28, 1937
Filing Date—August 22, 1938
to
Rate Schedule FPC No. 9

UNITED GAS PUBLIC SERVICE COMPANY
HOUSTON, TEXAS

August 15, 1937

Mississippi River Fuel Corporation,
St. Louis, Missouri.

Gentlemen:

Under date of August 1, 1929, your company entered into written agreements with Industrial Gas Company, The Palmer Corporation of Louisiana, and Moody-Seagraves Gas Company, Incorporated, respectively, by the terms of which respective agreements said companies agreed to sell and deliver to your company certain respective percentages of the requirements (as defined in said agreements) of your pipe line from the Monroe and Richland Gas Fields in the State of Louisiana to the City of St. Louis, Missouri. The undersigned, United Gas Public Service Company, has acquired the rights, interests and liabilities of said Industrial Gas Company, The Palmer Corporation of Louisiana and Moody-Seagraves Gas Company, Incorporated, respectively, under said respective agreements with your company and is now making deliveries to you of the gas required to be sold and delivered to you by the terms of said agreements and certain amendments and supplemental agreements entered into affecting the same.

Each of the above mentioned agreements of August 1, 1929, recites that the Seller therein proposes to obtain gas for delivery thereunder from the Monroe Gas Field and

the Richland Gas Field, and heretofore all deliveries under said agreements have been made from said fields. The undersigned has a supply of natural gas available from what is known as the Rodessa Field in Cass, County, Texas, and Caddo Parish, Louisiana, the

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Sugar Creek Field in Claiborne Parish, and the Cotton Valley Field in Webster Parish, Louisiana, which gas has a higher B.T.U. content than the gas being delivered to you from the Monroe and Richland Gas Fields.

The undersigned hereby agrees with you that, subject to the terms and conditions hereof and so far as operating conditions will permit, the undersigned will deliver to you and you will receive from the undersigned, under said agreements of August 1, 1929, as amended, natural gas from said Rodessa Field, Sugar Creek Field and/or Cotton Valley Field for fifty per cent (50%) of the quantity of gas which the undersigned is obligated to sell and deliver and you are obligated to purchase and receive under the terms of said agreements of August 1, 1929, as amended. Said gas from the Rodessa, Sugar Creek and Cotton Valley Fields shall not become a part of the regular supply under said above mentioned agreements, and Seller shall not have the right and shall be under no obligation to deliver gas to Buyer from said fields except to the extent provided herein and for the duration of this agreement.

The gas to be delivered to you from said Rodessa, Sugar Creek and Cotton Valley Fields shall be delivered to you at your receiving station in the Monroe Gas Field located at or near Perryville, Louisiana. Such gas shall be delivered to you at a pressure which shall not be less than the lowest pressure at which gas from the Monroe Gas Field is being currently delivered to you from time to time by the undersigned.

The gas deliverable hereunder shall contain no more sulphur than the gas produced from the Monroe Field, shall be free and clean from all foreign substances and fluids and shall be merchantable gas as produced from the wells, except that Seller shall have the right to extract the natural gasoline content from all gas deliverable hereunder, provided, however, that the heat unit content shall not be reduced below one



thousand (1000) B.T.U. per cubic foot as a result of such gasoline extraction.

The undersigned agrees to proceed immediately to provide a pipe line, at least twelve inches (12") in diameter, extending from the end of the undersigned's transmission line at its Sterlington Compressor Station site located in the SW-¼ of Section 32, Township 20 North, Range 4 East, Ouachita Parish, Louisiana, to your said receiving station at or near Perryville, in order to enable the undersigned to deliver gas to you from said Rodessa, Sugar Creek and Cotton Valley Fields. You agree to proceed immediately to install the necessary facilities to enable you to accept delivery of such gas. When such facilities have been provided by both parties, the undersigned shall commence making, and you shall commence receiving, deliveries of gas from said Rodessa, Sugar Creek and Cotton Valley Fields.

You agree to pay the undersigned (in addition to the regular price provided by said agreements of August 1, 1929, as amended, to be paid for gas delivered thereunder) all monetary benefits which may accrue to you by reason of the increased B.T.U. content of the gas delivered by you to your customers until such time as such payments to the undersigned amount in the aggregate to $45,000.00; said increased B.T.U. content resulting from the comming-

ling by you of the gas delivered by the undersigned to you from said Rodessa, Sugar Creek and Cotton Valley Fields with all gas which you receive into your line from other sources.

This agreement shall continue and remain in force and effect until cancelled by either party hereto by giving written notice thereof to the other party at least sixty (60) days prior to the effective date of such cancellation; provided, however, that if you elect to cancel this agreement before the undersigned has been paid said sum of $45,000.00, as provided in the preceding paragraph, you shall pay to the undersigned, on or before the effective date of such cancellation, an amount sufficient to complete said payment of $45,000.00; and provided, however, that if the



undersigned elects to cancel this agreement before having been paid said sum of $45,000.00, there shall be no obligation other than payments which may be due or may become due for gas delivered to you by the undersigned from said Rodessa, Sugar Creek and Cotton Valley Fields prior to the effective date of such cancellation.

If the foregoing is acceptable to you, please so indicate in the space provided below, thereby constituting this letter an agreement between us.

Very truly yours,

UNITED GAS PUBLIC SERVICE COMPANY
By: (Sgd) R. H. HARGROVE
Vice-President

ACCEPTED this 17th day of August, 1937.

MISSISSIPPI RIVER FUEL CORPORATION
By: (Sgd) F. H. LERCH, JR.
Vice-President

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UNITED GAS PIPE LINE COMPANY
Supplement No. 1
Effective Date—January 18, 1945
Filing Date—December 19, 1939
to
Supplement No. 7
to
Rate Schedule FPC No. 9

Received December 19, 1939

UNITED GAS PIPE LINE COMPANY
HOUSTON, TEXAS

November 22, 1939

Mississippi River Fuel Corporation,
407 N. 8th Street,
St. Louis, Mo.

Gentlemen:

Please refer to letter agreement dated August 15, 1937, made between your company and United Gas Public Service Company (to whose rights the undersigned has succeeded) for the supplying of natural gas from sources other than those mentioned in the supply contracts and amendments thereto, made by your company with Industrial Gas Company, The Palmer Corporation of Louisiana, and Moody Seagraves Gas Company, and since assumed by the undersigned.

It is hereby agreed that said letter agreement of August 15, 1937, be so amended as to provide that we may supply to you from fields other than the Monroe and Richland Fields gas in such quantities as we may elect up to but not in excess of 100% of the quantities we are obligated to deliver to you under the terms of said three supply contracts instead of only 50% of said requirements; otherwise said letter agreement of August 15, 1937, is to remain in full force and effect until terminated as provided therein.

If the above meets with your approval, please so indicate in the space provided below.

Yours very truly,

UNITED GAS PIPE LINE COMPANY
By M. A. ABERNATHY
Vice President

Accepted this 27th day of November, 1939.

MISSISSIPPI RIVER FUEL CORPORATION
By BEN C. COMFORT
Vice President and Manager

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UNITED GAS PIPE LINE COMPANY
Supplement No. 11
Effective Date—December 1, 1945
Filing Date—October 1, 1945
to
Rate Schedule FPC No. 9

## 100-2 GAS CONTRACTS

Received November 13, 1945

## UNITED GAS PIPE LINE COMPANY

## SERVING

## MISSISSIPPI RIVER FUEL CORPORATION

DESCRIPTION OF SERVICE:

Sale of natural gas, transported from Carthage Field, Texas, at a point in Monroe Gas Field, Louisiana, as set out in contract attached hereto, for transportation and resale in interstate commerce (as defined in the Natural Gas Act) for ultimate public consumption for domestic, commercial, industrial and other uses.

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AGREEMENT, made this 7th day of September, 1945 between UNITED GAS PIPE LINE COMPANY, a corporation of the State of Delaware, hereinafter sometimes referred to as "Seller", and MISSISSIPPI RIVER FUEL CORPORATION, a corporation of the State of Delaware, hereinafter sometimes referred to as "Buyer";

WITNESSETH:

WHEREAS, Industrial Gas Company, The Palmer Corporation of Louisiana and Moody-Seagraves Gas Company, respectively, entered into agreements for the sale of gas by them to Buyer herein, which agreements were dated as of the first day of August, 1929 and have been amended from time to time; and

WHEREAS, Seller here in has succeeded to the rights and assumed the obligations of Industrial Gas Company, The Palmer Corporation of Louisiana and Moody-Seagraves Gas Company arising out of said agreements; and

WHEREAS, Seller and Buyer desire further to amend said three agreements, as heretofore amended;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and obligations hereinafter set forth, the parties hereto do hereby enter in the following agreement:

ARTICLE 1.

When and if this agreement becomes effective, in

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accordance with the provisions of Article 9 hereof, the said three agreements, as heretofore amended, referred to in the preamble hereof, shall be further amended in the particulars hereinafter set forth. Said three agree-

ments, as heretofore amended, are for convenience hereinafter referred to in the singular as the "Existing Agreement".

ARTICLE 2.

From and after November 1, 1946 all gas deliverable by Seller to Buyer under the provisions of the Existing Agreement shall be delivered at a point of delivery at or near the outlet side of Buyer's Perryville Compressor Station in the Monroe Field.

ARTICLE 3.

It is contemplated that the gas deliverable by Seller to Buyer under said Existing Agreement, as herein amended, will be transported by Seller through a pipe line which Seller proposes to construct from the Carthage Field in the State of Texas to a point in said Monroe Field. Seller agrees to deliver said gas at the point of delivery established in accordance with the provisions of Article 2 hereof against the varying pressures (not, however, to exceed 450 pounds per square inch gauge) existing in Buyer's pipe line at such point of delivery.



ARTICLE 4.

From and after November 1, 1946 the price for gas delivered by Seller to Buyer under said Existing Agreement, as herein amended, shall be determined in accordance with the provisions of this Article 4.

Such price for gas delivered during any Billing Month shall consist of a Demand Charge and a Commodity Charge.

The Demand Charge for any Billing Month shall be 38¢ multiplied by the number of Mcf (1,000 cubic feet) of gas delivered hereunder on the day of maxi-

mum daily delivery hereunder during the twelve months' period succeeding November 1, 1946 the day of maximum daily delivery hereunder shall be determined for the period commencing with November 1, 1946 and ending at the end of the Billing Month under consideration.

The Commodity Charge shall be 5¢ per Mcf of gas delivered during the Billing Month under consideration.

The "price per Mcf" for any Billing Month will therefore be the sum of the Demand Charge and the Commodity Charge for such month



divided by the number of Mcf of gas delivered hereunder during such month.

The Commodity Charge for gas sold hereunder is based on gas having a total heat value content of one thousand (1,000) Btu per cubic foot. It is recognized that the heat value content may vary above or below such amount, and, in the event of such variation, the Commodity Charge for the gas delivered hereunder shall be corrected in the following manner:

Should Seller, during any Billing Month, deliver to Buyer gas containing an average of less than one thousand (1,000) Btu per cubic foot, the Commodity Charge of gas delivered hereunder during such Billing Month shall be reduced at the rate of one percent (1%) for each ten (10) Btu below one thousand (1,000) total Btu per cubic foot; and, should the gas so delivered during any Billing Month have an average of more than one thousand (1,000) Btu per cubic foot, the Commodity Charge of gas delivered hereunder during such Billing Month shall be increased at the rate of one percent (1%) for each ten (10) Btu above one thousand (1,000) total Btu per cubic foot, provided,

however, that such increase shall in no event exceed five percent (5%); provided, however, that in the event Buyer's arrangements with its customers do not provide for heat value content adjustment on all gas sold or delivered from Buyer's Pipe Line in any



particular Billing Month, then the adjustment between Buyer and Seller shall be applied to only a portion of the gas delivered by Seller to Buyer hereunder during such month, such portion to be the result obtained by multiplying the quantity representing full deliveries from Seller to Buyer hereunder during such month by a fraction the numerator of which shall be the total quantity of gas sold or delivered by Buyer to its customers during such month which is subject to heat value content adjustment and the denominator of which shall be the total quantity of gas sold or delivered by Buyer to its customers during such month.

Buyer agrees that it will use reasonable diligence to cause all future agreements for the sale of gas by Buyer, and all renewals of existing agreements for such sale, to provide heat value content adjustment on such gas to the extent it affects the price paid to Buyer to Seller under this agreement.

The Btu content of the gas delivered hereunder shall be determined by a Thomas recording calorimeter or other standard type of calorimeter owned and properly installed by Buyer and so located that the Btu content of such gas may be obtained. The monthly average of the daily readings so obtained, shall be corrected to the basis of measurement provided, and from a saturated basis to the average moisture content of the gas delivered, the result being the Btu content

of the gas delivered at such point during that month. Buyer shall test the accuracy of such calorimeter at regular intervals of reasonable lengths, and Seller shall have the right to witness such tests.

The degree of saturation by water vapor of the gas delivered hereunder shall be determined by Buyer at least twice monthly on or near the fifteenth (15th) and the thirtieth (30th) days of each month and shall be properly taken into account in determining the heat value of the gas delivered.

The above price is based upon taxes as they existed on the date of execution hereof, insofar as they affected Seller's cost, directly or indirectly. In the event such taxes are thereafter increased or decreased, an adjustment will be made in the above price in the manner and to the extent hereinafter provided.

The term "tax" as used herein shall mean:

Any tax (other than advalorem, income or excess profits taxes), license, fee or charge now or hereafter levied, assessed or made by any governmental authority on the act, right or privilege of production, severance, gathering, transportation, handling, sale or delivery of gas which is measured by the volumes, value or sales price of the gas in question; provided, however, that the term "tax" shall not be deemed to include any general franchise tax imposed on corporations



on account of their corporate existence or of the right to do business within the State as a foreign corporation.

To the extent that the weighted average amount of all such taxes lawfully required to be paid by Seller with

respect to any one thousand (1,000) cubic feet of gas delivered hereunder during any month after the date of execution hereof, shall exceed the weighted average of all such taxes required to be paid by Seller with respect to each one thousand (1,000) cubic feet of gas delivered by Seller to Buyer during the calendar month next preceding the date of execution hereof, the above price per one thousand (1,000) cubic feet of gas delivered hereunder shall be increased by an amount equal to fifty (50%) of such excess.

To the extent that the weighted average amount of all such taxes lawfully required to be paid by Seller with respect to any one thousand (1,000) cubic feet of gas delivered hereunder during any month after the date of execution hereof shall be less than the weighted average amount of all such taxes required to be paid by Seller with respect to each one thousand (1,000) cubic feet of gas so delivered by Seller to Buyer during the calendar month next preceding the date of execution hereof, the price of gas delivered hereunder during the month in question shall be reduced by an amount equivalent to fifty per cent (50%) of such decrease.

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If the weighted average of the aggregate of all such taxes lawfully required to be paid by Seller with respect to gas delivered under this agreement applicable to any month shall exceed the amount of all such taxes lawfully in effect on the date hereof, by an amount of more than 2¢ per Mcf, either party hereto shall have the right to terminate this agreement upon sixty (60) days written notice to the other party, given at any time after the close of such month, such termination to be effective as of the first day of the month specified in such notice; provided, however, that such notice shall not specify a date of

termination occurring within six (6) months after the date of such notice; provided, further, that Buyer, in the event Seller should give such notice, may nullify the effect thereof and prevent such intended cancellation by agreeing to reimburse Seller for the full amount of all such additional taxes lawfully required to be paid by Seller in excess of 2¢ per Mcf (such reimbursement to be in addition to the 50% reimbursement provided for by the provisions of this Article 4); and provided further that Seller, in the event Buyer should give such notice, may nullify the effect thereof and prevent such intended cancellation by agreeing to absorb, without requiring any reimbursement from Buyer, all of such additional taxes in excess of 2¢ per Mcf. In the event Buyer or Seller avail themselves of the privilege of preventing any such cancellation, the aforesaid agreement to nullify



the effect of said notice shall be in writing delivered to the other party within the sixty day period provided for in this paragraph. Any such agreement on the part of Buyer to reimburse Seller, or on the part of the Seller to absorb, as above provided, shall remain in force and effect for a period of one year from the effective date of such agreement and for successive periods of one year each, subject to the right of the party making such agreement to terminate the same at the end of any such one-year period by giving notice in writing not less than six months prior to the end of any such year. If any such agreement is so terminated the rights granted to Seller and Buyer under the first sentence of this paragraph shall again become effective in the same manner as is set forth in said sentence. Any such termination shall not affect the obligations of either party hereto arising under this agreement prior to the effective date of such termination.

For the purpose of determining the adjustment of taxes as aforesaid, any such tax lawfully required to be paid by any corporation, all of the outstanding stock of which of all classes is owned by a corporation which in turn owns all outstanding stock of all classes of Seller, and any such tax which Seller under contractual obligations refunds to the person or company lawfully required to pay the same, shall, unless constituting a duplication of the



like tax paid by the Seller, be considered to have been paid by Seller.

ARTICLE 5.

If (i) Seller completes the construction of its Carthage Monroe Line prior to November 1, 1946 and (ii) this agreement becomes effective, in accordance with the provisions of Article 9 hereof, prior to November 1, 1946, Seller agrees that from and after the happening of conditions (i) and (ii) above and until November 1, 1946 Seller will, upon demand from Buyer, deliver to Buyer from Seller's Carthage-Monroe Line at the delivery point tablished in accordance with the provisions of Article 2 ereof gas in an amount equal to the difference between Buyer's full input requirements for its pipe line system and the amount of gas then currently being received in the Monroe Field by Buyer from Seller (under the provisions of the Existing Agreement) and the other vendors from whom Buyer is then purchasing gas. The quantities of gas if any, so sold and delivered by Seller and received by Buyer shall be measured in the same manner and subject to the same provisions as are set forth in the Existing Agreement but the price therefor shall be the price set forth in Article 4 above; provided, however, that the Demand Charge for such Billing Month shall, in lieu of the Demand Charge set forth in Article 4, be 38¢ multiplied by the number of Mcf of gas delivered

hereunder on the day of maximum daily delivery hereunder during such Billing Month.

ARTICLE 6.

Upon this Agreement becoming effective, in accordance with the provisions of Article 9 hereof, Buyer shall have the right, at any time prior to May 1, 1946, to notify Seller of Buyer's desire to increase the Seller's percentage of the requirements of Buyer's pipe line system, which Buyer shall purchase under said Existing Agreement, as modified by this agreement, and should such notice be given then the quantity of gas which Buyer shall purchase and receive from Seller and Seller shall sell and deliver to Buyer, commencing November 1, 1946 and continuing to November 1, 1966, shall be such increased percentage of the requirements of Buyer's pipe line system as specified by Buyer.

In addition to the foregoing, Buyer shall have the right at any time subsequent to May 1, 1946 and prior to May 1, 1961, to notify Seller on or before May 1 of any year of Buyer's desire to increase the Seller's percentage of the requirements of Buyer's pipe line system, which Buyer shall purchase under said Existing Agreement as modified by this Agreement, and should such notice be given then the quantity of gas which Buyer shall purchase and receive from Seller and Seller shall sell and deliver to Buyer, commencing on November 1 of the year in which such notice is given and continuing



until November 1, 1966, shall be such increased percentage of the requirements of Buyer's pipe line system as specified by Buyer, provided Seller had on the date of receipt of said notice line capacity in said Carthage-Monroe Line,

in addition to the requirements of its then existing commitments, available to deliver such increased quantity of gas specified in any such notice at the delivery point herein established. In the event Seller does not have sufficient line capacity in said Carthage-Monroe Line available as aforesaid to deliver such increased quantity of gas, then Seller will increase the capacity of said Carthage-Monroe Line as required to deliver to Buyer said increased quantity of gas, provided Buyer will advance to Seller the funds required for such increase of capacity, not exceeding $1,500,000. All funds so advanced will be repaid by Seller to Buyer in equal annual installments over the remaining period of said Existing Agreement as hereby modified, with interest thereon at such annual rate as is then currently being paid upon loans of a similar character.

For such increased quantities of gas the price provided for in this agreement shall be adjusted by appropriate revision of the Demand and Commodity Charge, respectively, to compensate Seller for all of Seller's increased cost resulting from such increased capacity.

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ARTICLE 7.

When and if this agreement becomes effective, in accordance with the provisions of Article 9 hereof, the term of the Existing Agreement between Seller and Buyer is hereby extended so that the same shall terminate on November 1, 1966.

ARTICLE 8.

Except as herein amended said Existing Agreement shall continue in full force and effect between the parties.

Nothing herein contained shall be deemed in any manner to change the agreement between Seller, or its predecessors, and Buyer known as the "Crossett Agreement".

ARTICLE 9.

Seller shall promptly file a copy of this agreement, as a rate schedule, with the Federal Power Commission, together with such schedules and notices with respect to this agreement and any changes effected thereby as may be required or contemplated by the provisions of the Natural Gas Act and the orders, rules and regulations of said Commission. Seller shall promptly apply to the Federal Power Commission for the specific authorization to transport through its said Carthage-Monroe Line and sell the gas required for delivery hereunder.



This agreement shall not become effective unless (i) the same is permitted to become effective, as a rate schedule and without suspension of the rates hereinagreed upon, by action or inaction of the Federal Power Commission and (ii) the Federal Power Commission permits Seller to transport through its said Carthage-Monroe Line and sell the full quantities of gas required for delivery hereunder "as Additional Quantities", as such term is used in paragraph (B) of the Order issued on July 5, 1945 by said Commission in Docket No. G-622. This agreement, if so permitted to become effective by the Federal Power Commission, shall become effective as of 9:00 o'clock A. M. on the first day of the month following such permission or as of such different date as may be prescribed for this agreement by the Federal Power Commission, provided that if this agreement shall not have been permitted so to become effective on or before 180 days from the date hereof, then either party hereto may, at its option, by written notice to the other party, terminate this agreement whereupon the same shall be null and void for all purposes and shall be deemed in no manner

to have impaired the relationship between the parties under the provisions of the Existing Agreement.

IN WITNESS WHEREOF the parties hereto have caused

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this agreement to be duly signed by their respective officers on the day and year first above written.

UNITED GAS PIPE LINE COMPANY
By R. H. HARGROVE
Vice President

Attest:
J. H. MIRACLE
Secretary

MISSISSIPPI RIVER FUEL CORPORATION
By BEN C. COMFORT
President and Manager

Attest:
ROSALIE M. VERHEYDEN
Asst. Secretary

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6641

UNITED GAS PIPE LINE COMPANY
Supplement No. 12
Effective Date—May 1, 1947
Filing Date—May 14, 1947
to
Rate Schedule FPC No. 9

UNITED GAS LINE COMPANY
SHREVEPORT 92, LOUISIANA

April 29, 1947

Mississippi River Fuel Corporation
407 North Eighth Street
St. Louis 1, Missouri

Gentlemen:

Please refer to that certain agreement between the undersigned as seller and you as buyer, dated September 7,

1945, as amended, relating to the sale and delivery of gas by the undersigned to you at your Perryville compressor station in the Monroe Field.

We have heretofore advised you that we contemplate delivering gas to Texas Eastern Transmission Corporation from our Carthage-Monroe line for a period of nine months beginning May 1, 1947 and from month to month thereafter until cancelled by either party, and that we proposed, during the period such deliveries are being made to Texas Eastern Transmission Corporation, to deliver to you, at the delivery point provided for in said agreement and under the same conditions with respect to delivery pressure, gas from certain of our pipe lines other than our Carthage-Monroe line.

You have informed us that you are agreeable to amending the above mentioned contract in order to permit the delivery of gas from such other lines, all as is set forth more fully hereinafter.

It is, therefore, agreed that said contract is hereby amended to provide that during the period we are delivering gas to Texas Eastern Transmission Corporation from our Carthage-Monroe line as above set forth, it will be agreeable for us to deliver to you under said agreement of September 7, 1945, at the delivery point therein specified, gas from pipe lines other than our Carthage-Monroe line, if we so elect. The quality of such gas shall not be inferior in any respect to that of the gas which we are presently delivering to you from our Carthage-Monroe line; provided, however, that such gas deliverable from lines other than our Carthage-Monroe line will not be dehydrated during the summer months and prior to approximately October first of this year.

We shall give you as much notice as is possible of the date on which we will commence deliveries to you from

lines other than our Carthage-Monroe line, and of the date on which such deliveries will be discontinued.

You are to have the right to terminate this arrangement by the giving of thirty (30) days' notice on January 1, 1948, or on any date thereafter.

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If the foregoing is acceptable to you, please so indicate in the space provided below and return a signed copy to us for our file.

Yours very truly,

UNITED GAS PIPE LINE COMPANY
By M. A. ABERNATHY
Vice President

Accepted and agreed to this 1st day of May, 1947.
MISSISSIPPI RIVER FUEL CORPORATION
By BEN C. COMFORT
President

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6645

UNITED GAS PIPE LINE COMPANY
Supplement No. 15
Effective Date—December 1, 1949
Filing Date—November 23, 1949
to
Rate Schedule FPC No. 9

100-2 Gas

CONTRACTS

THIS AGREEMENT, made and entered into this 16th day of November, 1949, by and between UNITED GAS PIPE LINE COMPANY, a Delaware corporation, hereinafter referred to as "Seller", and MISSISSIPPI RIVER FUEL CORPORATION, a Delaware corporation, hereinafter referred to as "Buyer";

WITNESSETH:

WHEREAS, Industrial Gas Company, The Palmer Corporation of Louisiana, and Moody-Seagraves Gas Com-

pany, respectively, entered into agreements, dated as of the 1st day of August, 1929 with Buyer, for the sale of gas by said sellers to Buyer for a portion of the requirements of Buyer's pipe line as therein provided, all of which agreements are hereinafter collectively referred to as "Gas Sales Agreement"; and

WHEREAS, said Gas Sales Agreement has been supplemented and amended from time to time by various amendatory agreements, including that certain amendatory agreement dated September 7, 1945, between Seller, (the successor to the rights and obligations of said sellers in said Gas Sales Agreement) and Buyer; to all of which agreements reference is hereby made; and

WHEREAS, pursuant to the terms of Article 6 of said agreement dated September 7, 1945, Buyer by letter dated March 28, 1949, addressed to Seller has notified Seller of its desire commencing



November 1, 1949, to increase Seller's percentage of the requirements of Buyer's pipe line system (which percentage is presently 40 per cent of such requirements, reduced by the amount set forth in amendatory agreement dated August 31, 1948, between Seller and Buyer, with a maximum daily delivery of 73,000 Mcf) to 65 per cent of the requirements of said system (reduced by the amount set forth in said amendatory agreement dated August 31, 1948) with a maximum daily delivery of 195,000 Mcf; and

WHEREAS, the parties desire, in accordance with the provisions of said contract, as amended, to revise the pricing provisions set forth in said contract, as amended, so as to compensate Seller for all of Seller's increased costs applicable to the increased quantities of gas specified in Buyer's said notice to Seller.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto do hereby enter into the following agreement:

1.

It is contemplated that the increased quantities of gas resulting from Buyer's said notice of March 28, 1949, will be transported by Seller by means of additional capacity to be provided by the construction of a pipe line looping a portion of Seller's Carthage-Sterlington 24-Inch Line which Seller proposes to construct as set forth in Seller's application to the Federal Power Commission in Docket No. G-1252.

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2.

From and after the effective date hereof, the price to be paid by Buyer to Seller for all gas delivered by Seller to Buyer (including the increased quantities of gas resulting from Buyer's above mentioned notice dated March 28, 1949) under said Gas Sales Agreement, as heretofore amended and as herein amended, shall be determined in accordance with the provisions of this Article 2, in lieu of the provisions of Article 4 of the above mentioned amendatory agreement dated September 7, 1945, between Seller and Buyer; and effective from and after effective date hereof, said Article 4, in its entirety, shall be and is hereby cancelled and superseded by the following provisions, to-wit:

The price for such gas delivered during any billing month shall consist of a Demand Charge and a Commodity Charge.

Demand Charge: $0.45 per Mcf of Billing Demand per month.

The Commodity Charge: 6.5¢ per Mcf for all gas delivered during any billing month;

provided, however, that at the beginning of each successive five year period after the effective date of this agreement, Seller may file with the Federal Power Commission, or other body having jurisdiction, for a change in the Commodity Charge in accordance with the following subparagraphs, provided further however, that should it hereafter become unnecessary for Seller so to file, Seller shall have the right to increase the Commodity Charge to provide that

(1) The Commodity Charge for the second five



year period shall be

7.2¢ per Mcf for all gas

(2) The Commodity Charge for the third five year period shall be

7.8¢ per Mcf for all gas

(3) The Commodity Charge for the remaining term of the Contract shall be

8.4¢ per Mcf for all gas

Seller may file with the Federal Power Commission or other body having jurisdiction for a change in the Commodity Charge at any time that Seller may be able to support and justify such change.

In any event, Buyer unconditionally obligates itself to pay any increases in the Commodity rate and demand charge, or either thereof, as may be approved by the Federal Power Commission or such other regulatory authority as may have jurisdiction.

*Minimum Bill:*

The Minimum Demand Charge to be paid by Buyer to Seller for the month shall be $87,750.00.

*Determination of Billing Demand:*

The Billing Demand hereunder shall be the maximum volume of gas taken by Buyer in any one day during the twelve (12) months period ending with the last day of the billing month, provided, however, that during the initial twelve (12) months period beginning with the effective date hereof, the Billing Demand shall be the maximum volume of gas taken by Buyer in any one day during the period of time starting with the effective date hereof, and ending with the last day of each



billing month during the initial twelve (12) months period.

If Seller is unable to deliver, when called upon by Buyer during any one or more twenty-four (24) hour periods, the quantity of natural gas constituting the Billing Demand in effect for that billing period, then a reduction in the Demand Charge for that billing period shall be made in proportion that the deficiency in delivery bears to thirty (30) times the Billing Demand for such monthly period.

It is recognized that the price set forth in this Article is based upon the delivery of the hereinabove mentioned increased percentage of the requirements of Buyer's pipe line system, up to the maximum daily quantity of 195,000 Mcf specified in Buyer's said notice of March 28, 1949. In the event Seller is required to install additional facilities in order to deliver to Buyer daily quantities of gas in excess of 195,000 Mcf, then for such excess quantities of gas, the price above set forth shall be revised by the parties and shall be adjusted, by appropriate revision, to compensate Seller for all of Seller's increased costs applicable to such excess quantities of gas.

(6649)

The Commodity Charge for gas sold hereunder is based on gas having a total heat value content of one thousand (1,000) B. t. u. per cubic foot. It is recognized that the heat value content may vary above or below such amount, and, in the event of such variation, the Commodity Charge for the gas delivered hereunder shall be corrected in the following manner:

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Should Seller, during any billing month, deliver to Buyer gas containing an average of less than one thousand (1,000) B. t. u. per cubic foot, the Commodity Charge of gas delivered hereunder during such billing month shall be reduced at the rate of one-tenth of one per cent (.1%) for each B. t. u. below one thousand (1,000) total B. t. u. per cubic foot and, should the gas so delivered during any billing month have an average of more than one thousand (1,000) B. t. u. per cubic foot, the Commodity Charge of gas delivered hereunder during such billing month shall be increased at the rate of one-tenth of one per cent (.1%) for each B. t. u. above one thousand (1,000) total B. t. u. per cubic foot, provided, however, that in the event Buyer's arrangements with its customers do not provide for heat value content adjustment on all gas sold or delivered from Buyer's pipe line in any particular billing month, then the adjustment between Buyer and Seller shall be applied to only a portion of the gas delivered by Seller to Buyer hereunder during such month, such portion to be the result obtained by multiplying the quantity representing full deliveries from Seller to Buyer hereunder during such month by a fraction the numerator of which shall be the total quantity of gas sold or delivered by Buyer to its customers during such month which is subject to heat value content adjustment and the denominator of which shall be the total quantity of gas sold or delivered by Buyer to its customers during such month.

Buyer agrees that it will use reasonable diligence to cause

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all future agreements for the sale of gas by Buyer, and all renewals of existing agreements for such sale, to provide heat value content adjustment on such gas to the extent it affects the price paid by Buyer to Seller under this agreement.

The B. t. u. content of the gas delivered hereunder shall be determined by a Thomas recording calorimeter or other standard type of calorimeter owned and properly installed by Buyer and so located that the B. t. u. content of such gas may be obtained. The monthly average of the daily readings so obtained shall be corrected to the basis of measurement provided, and from a saturated basis to the average moisture content of the gas delivered, the result being the B. t. u. content of the gas delivered at such point during that month. Buyer shall test the accuracy of such calorimeter at regular intervals of reasonable lengths, and Seller shall have the right to witness such tests.

The degree of saturation by water vapor of the gas delivered hereunder shall be determined by Buyer at least twice monthly on or near the fifteenth (15th) and the thirtieth (30th) day of each month and shall be properly taken into account in determining the heat value of the gas delivered.

3.

Buyer agrees to reimburse Seller for all taxes (other than such specific taxes as were in effect on September 1, 1949, up to the

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respective rates thereof on said date, which Seller was then paying directly or indirectly) which may be levied

upon and paid by Seller, or which Seller under contractual obligation pays to the party on which such taxes are levied, on or with respect to all gas delivered hereunder.

The term "taxes" as used herein shall mean any tax (other than ad valorem income or excess profits taxes), license, fee or charge now or hereafter levied, assessed or made by any governmental authority on the gas itself or on the act, right or privilege of production, severance, gathering, transportation, handling, sale or delivery of gas which is measured by the volume, value or sales price of the gas in question; provided, however, that the term "tax" shall not be deemed to include any general franchise tax imposed on corporations on account of their corporate existence or on their right to do business within the State as a foreign corporation.

The tax reimbursement herein provided for shall, in no wise, be considered a part of, or increase in, the monthly rate hereinabove set forth but shall be a direct obligation of Buyer.

4.

Except as herein specifically changed and amended, said Gas Sales Agreement, as heretofore amended, shall remain the same and continue in full force and effect as written.

Nothing herein contained shall be deemed in any manner to



change the agreement between Seller, or its predecessors, and Buyer known as the "Crossett Agreement."

5.

Seller shall promptly file a copy of this agreement, as a rate schedule, with the Federal Power Commission.

6.

This agreement shall become effective as of the date when any portion of the facilities authorized in Federal Power

Commission Docket No. G-1252 shall be placed in service, provided however the minimum bill provisions as set forth in paragraph 1 hereof shall not become effective until all of the facilities authorized in said Docket No. G-1252 shall have been completed and placed in service.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate originals by their respective officers on the day and year first above written.

UNITED GAS PIPE LINE COMPANY
By s/ A. D. GREENE
Vice President

MISSISSIPPI RIVER FUEL CORPORATION
By s/ W. G. MARBURY
President

Witnesses:
s/ GEO. D. FISER
s/ R. V. TERRY

Attest:
s/ J. H. MIRACLE
Secretary

Witnesses:
s/ GEO. D. FISER
s/ R. V. TERRY

Attest:
s/ A. W. MANLEY
Secretary

6654

UNITED GAS PIPE LINE COMPANY
Supplement No. 1
Effective Date—December 1, 1949
Filing Date—November 23, 1949
to
Supplement No. 15
to
Rate Schedule FPC No. 9

100-2 Gas

CONTRACTS

UNITED GAS PIPE LINE COMPANY

SHREVEPORT, LA.

November 16, 1949

Mississippi River Fuel Corporation
407 North Eighth Street
St. Louis 1, Missouri

Attention: Mr. W. G. Marbury
President

Gentlemen:

It is anticipated that the additional gas requested by Mississippi River Fuel Corporation by letter dated March 28, 1949, must be supplied by United Gas Pipe Line Company from purchases of surplus gas in the Carthage Field. United is entering into purchase contracts for the purchase of this surplus gas. These purchase contracts are for twenty (20) years, and the price to be paid thereunder is on a sliding scale of 7½ cents per Mcf for the first 5-year period, increasing one cent each 5 years to 10½ cents for the final 5-year period.

Due to variations in the market demands of both United and others now withdrawing gas from Carthage Field, the amount of surplus gas purchases may, in any year, be less than the amount estimated by United to supply the increased requirements of Mississippi River Fuel Corporation. It is the intention of United, as of March 1st of each year, to make an appropriate adjustment in the commodity charge as set out in its amendatory agreement with

Mississippi River Fuel Corporation dated November 16, 1949, in the event that the surplus gas purchases, chargeable to Mississippi River Fuel's increased demand as set out in said agreement, shall be less than 122/195 of Mississippi River Fuel's total requirements from United. The amount of the adjustment, and the method of calculation, shall be approved by the Federal Power Commission.

United also serves from the Carthage Field certain other customers, namely, Texas Eastern Transmission Corporation, Southern Natural Gas Company, and certain local markets. In the event that United should increase its contractual commitments to Texas Eastern or Southern over that presently in effect or should increase its deliveries from said Field to its local markets over an average daily delivery of 25,000 Mcf, all purchases by United under its surplus gas contracts shall be allocated between the above markets and



Mississippi River Fuel Corporation in the proportion that the Mississippi River Fuel increase bears to all increases over the commitments in effect on March 28, 1949. For the purpose of this computation, the prior commitment of United to Mississippi River Fuel shall be taken as 73/195 of the increased commitment resulting from the agreement of November 16, 1949.

If the foregoing is acceptable to you, please so indicate by executing in the space provided below and returning to us the enclosed duplicate hereof.

Very truly yours,
UNITED GAS PIPE LINE COMPANY
By /s/ A. D. GREENE
Vice President

Accepted and agreed to this 16th day of November, 1949.
MISSISSIPPI RIVER FUEL CORPORATION
By /s/ W. G. MARBURY
President

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UNITED GAS PIPE LINE COMPANY
Rate Schedule FPC No. 10
Effective Date—November 21, 1929
Filing Date—August 22, 1938

# UNITED GAS PIPE LINE COMPANY

Serving

# MISSISSIPPI RIVER FUEL CORPORATION

DESCRIPTION OF SERVICE:

Sale of natural gas in the Monroe, Louisiana Gas Field, as set out in contract attached hereto, for transportation and resale in interstate commerce (as defined in the Natural Gas Act) for ultimate public consumption for domestic, commercial, industrial and other uses.

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## CONTRACT NO. L 7-B
## AGREEMENT

Between

INDUSTRIAL GAS COMPANY

and

MISSISSIPPI RIVER FUEL CORPORATION

6658

THIS AGREEMENT, made as of the first day of August, 1929, between INDUSTRIAL GAS COMPANY, a corporation of the State of Florida, which corporation is hereinafter referred to as "Seller", and MISSISSIPPI RIVER FUEL CORPORATION, a corporation of the State of Delaware, which corporation is hereinafter referred to as "Buyer";

WHEREAS, Buyer is constructing a gas pipe line from the Monroe Gas Field and the Richland Gas Field in the State of Louisiana to St. Louis, Missouri and the St. Louis

district (said city and district being hereinafter referred to as "the St. Louis District"); and

WHEREAS, Buyer has made or is about to make contracts with SOUTHERN CARBON COMPANY, UNITED CARBON COMPANY, MOODY-SEAGRAVES GAS COMPANY, INCORPORATED, INTERSTATE NATURAL GAS COMPANY, INCORPORATED, HOPE PRODUCING COMPANY, and THE PALMER CORPORATION OF LOUISIANA, which corporations are hereinafter collectively referred to as the "Vendors", for the supply of eighty per cent. (80%) of the requirements of said pipe line as defined in paragraph numbered IV hereof; and

WHEREAS, Buyer desires to enter into a contract with Seller for the supply of twenty per cent. (20%) of the requirements of said pipe line as defined in paragraph numbered IV hereof; and

WHEREOF, Seller owns or has leases or purchase contracts covering the gas rights on approximately one hundred sixty-three thousand, five hundred fifty-six (163,556) acres of land in said Monroe Gas Field and said Richland Gas Field, which land is generally described as

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being located in Township Fourteen (14) North, Range Five (5) East; Township Fifteen (15) North, Ranges Four (4), Five (5) and Six (6) East; Township Sixteen (16) North, Ranges Four (4), Five (5), Six (6), and Seven (7) East; Township Seventeen (17) North, Ranges Five (5), Six (6) and Seven (7) East; Township Eighteen (18) North, Range Six (6) East; Township Nineteen (19) North, Ranges Two (2), Three (3), Four (4) and Six (6) East; Township Twenty (20) North, Ranges Two (2), Three (3), Four (4), Five (5) and Seven (7) East; Township Twenty-one (21) North, Ranges Two (2), Three (3), Four (4), Five (5), Six (6) and Seven (7) East; Township Twenty-two (22) North, Ranges Two (2), Three (3), Four

(4), Five (5) and Six (6) East; and Township Twenty-three (23) North, Ranges Two (2), Three (3), Four (4), Five (5), Six (6) and Seven (7) East, and which said land is colored yellow on the attached map, and Seller desires to enter into a contract with Buyer for the sale of gas for said pipe line;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That in consideration of the mutual covenants herein contained, the parties do hereby covenant and agree as follows:

I. Buyer agrees to construct said pipe line to the St. Louis District and to commence taking deliveries of gas hereunder as soon as construction of its said gas pipe line shall have been completed, but in any event not later than January 1, 1930.

II. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and receive from Seller gas in the amounts, for the prices and on the terms and conditions hereinafter expressed.

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**6689**

UNITED GAS PIPE LINE COMPANY
Supplement No. 8
Effective Date—July 3, 1934
Filing Date—February 10, 1939
to
Rate Schedule FPC No. 10

Received February 10, 1939

UNITED GAS SYSTEM
RUSK BUILDING
HOUSTON, TEXAS

July 3, 1934

Mississippi River Fuel Corporation,
St. Louis, Missouri.
Gentlemen:

Under date of August 1, 1929 your Company entered into written agreements with Industrial Gas Company, The

Palmer Corporation of Louisiana and Moody-Seagraves Gas Company, Incorporated, respectively, by the terms of which respective agreements said Companies agreed to sell and deliver to your Company certain respective percentages of the requirements (as defined in said agreements) of your pipe line from the Monroe and Richland Gas Fields in the State of Louisiana to the City of St. Louis, Missouri. Under said agreements the percentage of such requirements to be supplied by Industrial Gas Company was 20 per cent, the percentage to be supplied by The Palmer Corporation of Louisiana was 10 per cent and the percentage to be supplied by Moody-Seagraves Gas Company, Incorporated was 10 per cent, making an aggregate of 40 per cent of said requirements to be supplied by said three Companies.

The undersigned, United Gas Public Service Company, has acquired the rights, interests and liabilities of said Industrial Gas Company, The Palmer Corporation of Louisiana and Moody-Seagraves Gas Company, Incorporated, respectively, under said respective agreements with your Company, and the undersigned is now making deliveries to you of the gas required to be sold and delivered to you by the terms of said agreements.

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These deliveries are being made at receiving stations in the Monroe Gas Field and in the Richland Gas Field, as designated in said agreements. Such deliveries are being made separately for each agreement in the same manner as was previously done when said agreements were held by said Industrial Gas Company, The Palmer Corporation of Louisiana and Moody-Seagraves Gas Company, Incorporated, respectively.

The undersigned, United Gas Public Service Company, hereby confirms its understanding with you that hereafter deliveries of gas under the above mentioned agreements

shall be consolidated for convenience in measuring, dispatching and billing so that hereafter deliveries under said agreements may be made through one set of meters at each delivery point in the same manner as though the undersigned had one agreement with your Company for the percentages of your requirements which are covered by all three of said agreements. It is understood and agreed, however, that it is not intended by this agreement to change any of the rights or obligations existing under said agreements or any of the priorities granted to you thereby.

If the foregoing is acceptable to you, please so indicate in the space provided below, thereby constituting this an agreement between us.

Yours very truly,

UNITED GAS PUBLIC SERVICE COMPANY
By (Sgd) R. H. HARGROVE
Vice-President

Accepted:
MISSISSIPPI RIVER FUEL CORPORATION
By (Sgd) F. H. LERCH, JR.
Vice-President

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**6724**

UNITED GAS PIPE LINE COMPANY
Rate Schedule FPC No. 11
Effective Date—November 21, 1929
Filing Date—August 22, 1938

UNITED GAS PIPE LINE COMPANY

Serving

MISSISSIPPI RIVER FUEL CORPORATION

DESCRIPTION OF SERVICE:

Sale of natural gas in the Monroe, Louisiana Gas Field, as set out in contract attached hereto, for transportation and resale in interstate commerce (as defined in the Nat-

ural Gas Act) for ultimate public consumption for domestic, commercial, industrial and other uses.

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Received August 22, 1938

**6725**

CONTRACT NO. L 7-C
AGREEMENT

Between

THE PALMER CORPORATION OF LOUISIANA

and

MISSISSIPPI RIVER FUEL CORPORATION

**6726**

THIS AGREEMENT, made as of the first day of August, 1929, between THE PALMER CORPORATION OF LOUISIANA, a corporation of the State of Delaware, which corporation is hereinafter referred to as "Seller", and MISSISSIPPI RIVER FUEL CORPORATION, a corporation of the State of Delaware, which corporation is hereinafter referred to as "Buyer";

WHEREAS, Buyer is constructing a gas pipe line from the Monroe Gas Field and the Richland Gas Field in the State of Louisiana to St. Louis, Missouri and the St. Louis district, (said city and district being hereinafter referred to as "the St. Louis District"); and

WHEREAS, Buyer has made or is about to make contracts with SOUTHERN CARBON COMPANY, UNITED CARBON COMPANY, INDUSTRIAL GAS COMPANY, MOODY-SEAGRAVES GAS COMPANY, INCORPORATED, INTERSTATE NATURAL GAS COMPANY, INCORPORATED and HOPE PRODUCING COMPANY, which corporations are hereinafter collectively referred to as the "Vendors", for the supply of ninety per cent. (90%) of the requirements of said pipe line as defined in paragraph numbered IV hereof; and

(6726)

WHEREAS, Buyer desires to enter into a contract with Seller for the supply of ten per cent. (10%) of the requirements of said pipe line as defined in paragraph numbered IV hereof; and

WHEREAS, Seller owns or has leases permitting it to produce gas from approximately seven thousand five hundred sixty-two (7,562) acres of land in said Monroe Gas Field, which land is generally described as being located in Townships Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20) and

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Twenty-one (21), Ranges Two (2), Three (3), Four (4) and Five (5) East, and which said land is colored orange on the attached map, and has entered into contracts for the purchase of gas from other producers in said field, and owns or has leases permitting it to produce gas from approximately twenty-four thousand four hundred eight (24,408) acres of land in said Richland Gas Field, which said land is generally described as being located in Townships Fifteen (15), Sixteen (16), Seventeen (17) and Eighteen (18), Ranges Five (5), Six (6) and Seven (7) East, and which said land is colored orange on the attached map, and Seller desires to enter into a contract with Buyer for the sale of gas for said pipe line;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That in consideration of the mutual covenants herein contained, the parties do hereby covenant and agree as follows:

I. Buyer agrees to construct said pipe line to the St. Louis District and to commence taking deliveries of gas hereunder as soon as the construction of its said gas pipe line shall have been completed, but in any event not later than January 1, 1930.

II. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and receive from Seller gas, in the

amounts, for the prices and on the terms and conditions hereinafter expressed.

III. Seller agrees (a) that the recital of approximate acreage and the description thereof contained in the fourth preamble of this agreement and shown colored orange on the attached map, and the statement in said preamble in re gas purchase contracts have reference to



such approximate acreage and contracts as of on or about November 16, 1928, (b) that as of the date of this agreement said approximate acreage is in amount not less than, and that the location thereof and the status of said gas purchase contracts are substantially, as described in said preamble, and (c) that on or before the first day of October, 1929, Seller will execute and deliver a supplemental agreement with Buyer (1) describing and listing the respective approximate acreages, and the aggregate approximate acreage, of the lands in said Monroe Gas Field and said Richland Gas Field, respectively, as of the date of this agreement owned by Seller or in respect of which it has leases permitting it to produce gas, (2) describing and listing its contracts for the purchase of gas from other producers in said fields, and (3) providing that said description and list of said acreage and contracts shall be deemed incorporated in, and a part of, this agreement and substituted for and in lieu of the more general description of said acreage and contracts contained in said preamble.

IV. The quantity of gas which Buyer shall purchase and receive from Seller and Seller shall sell and deliver to Buyer shall be ten per cent. (10%) of the requirements of said pipe line. The requirements of said pipe line are hereby defined to mean an amount determined by adding: (a) all the gas which may be taken into said pipe line at any point, whether such gas shall be transported to or sold

in the St. Louis District, points beyond said District, or points intermediate to said District and the southerly terminus of said pipe line; and (b) all the gas which may be taken into and/or transported through any lateral or extension of said pipe line; and (c) all the gas lost in transit; and (d) all the gas used in the operation of compressor stations.

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**6792**

**Item No. S**

UNITED GAS PIPE LINE COMPANY
Rate Schedule FPC No. 115
Effective Date—4-24-52
Filing Date—3-24-52

100-2 GAS CONTRACTS

THIS AGREEMENT, made and entered into this 1st day of December, 1951, by and between UNITED GAS PIPE LINE COMPANY, A Delaware corporation (hereinafter referred to as "Seller"), and MISSISSIPPI RIVER FUEL CORPORATION, a Delaware corporation (hereinafter referred to as "Buyer");

WITNESSETH:

WHEREAS, Seller owns and operates an extensive natural gas pipe line system in portions of the States of Louisiana, Texas and Mississippi, and has obtained from the Federal Power Commission a certificate of public convenience and necessity in Docket No. G-1447 authorizing Seller to strengthen and enlarge its system by the construction of certain additional facilities, and upon completion thereof Seller will have natural gas available for sale to Buyer from said pipe line system as so strengthened and enlarged; and

WHEREAS, Buyer owns and operates a natural gas pipe line system extending from the Monroe Gas Field in Louisiana to St. Louis, Missouri, and environs, and desires to

purchase from Seller, and Seller desires to sell to Buyer, natural gas for its pipe line system; and

WHEREAS, said certificate in Docket No. G-1447 as above referred to also authorizes Seller to sell and deliver natural gas to Buyer as proposed in the application in said docket and the hearing exhibits in support thereof, and as contemplated in this agreement, subject, however, to the following quoted condition among others:

> "United shall file, at least 60 days prior to the delivery of natural gas under this order to
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> **6793**
>
> Mississippi River Fuel and to Texas Eastern, rate schedules and service agreements covering service to Mississippi River Fuel and to Texas Eastern as authorized herein, which shall provide rates which will produce charges not in excess of those which would result from a demand charge of $1.30 per Mcf per month and a commodity charge of 12.5¢ per Mcf. Each of such rate schedules shall include minimum bill provisions based upon a 72% load factor. Such rate schedules shall not include any Btu price adjustment clauses."

and

WHEREAS, Seller and Buyer are desirous of executing an agreement for the sale of natural gas so authorized by the Federal Power Commission that will be in full conformity with the Commission's Opinion and Order issuing said certificate and will serve as the initial rate schedule and service agreement required to be filed by the condition above quoted;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto do hereby covenant and agree as follows:

ARTICLE 1.

Subject to all the terms, conditions and limitations hereinafter set forth, Seller agrees to sell and deliver or cause to be delivered to Buyer and Buyer agrees to purchase and receive from Seller and pay Seller for natural gas in the manner and in the quantities hereinafter provided.

ARTICLE 2.

A. MAXIMUM DAILY QUANTITY

The term "Maximum Daily Quantity" shall mean the maximum quantity of natural gas which Seller is obligated to deliver to Buyer



during any one day, initially fixed and thereafter increased or decreased in the manner hereinafter provided, but in no event in excess of two hundred ten thousand (210,000) Mcf per day.

Seller agrees to sell and deliver to Buyer, commencing on the date of first delivery hereunder, and on each day thereafter, such quantities of natural gas as Buyer may request, but not in excess of the Maximum Daily Quantity in effect on such day. The initial Maximum Daily Quantity shall be (i) a quantity of one hundred thousand (100,000) Mcf, or (ii) such greater quantity up to but not in excess of one hundred fifty thousand (150,000) Mcf as Buyer may, on or before February 2, 1952, designate in writing to Seller.

Buyer contemplates that Buyer will be able to obtain a supply of gas under renewal agreements with Buyer's existing suppliers in the Monroe Field, Louisiana, whose present contracts with Buyer expire on February 2, 1952. The aggregate of the total daily quantities of gas which Buyer is able to obtain initially under all such renewal agreements is hereinafter referred to as "Monroe Field Gas", and on or before February 2, 1952, Buyer will notify

Seller of the quantity of such Monroe Field Gas. Seller agrees to sell and Buyer agrees to buy hereunder additional quantities of gas equivalent in the aggregate to the quantity of such Monroe Field Gas so specified by Buyer in said notice, up to but not in excess of sixty thousand (60,000) Mcf per day, under the following conditions:

From and after February 2, 1952, as the daily deliveries of

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Monroe Field Gas under said renewal agreements decrease in volume, Buyer shall give notice in writing to Seller not later than May 1 of each year of the expected reduction in the daily deliveries of Monroe Field Gas, and commencing the following November 1 the Maximum Daily Quantity shall be increased by the amount of such expected reduction and Seller shall be obligated to deliver to Buyer such increased Maximum Daily Quantity from said November 1 until a further increase in the Maximum Daily Quantity is made effective in the same manner; provided, however, that such increases shall never exceed in the aggregate the maximum quantity specified in the last sentence of the next above paragraph.

Unless Seller so elects, in accordance with the provisions of the next succeeding paragraph of this Article, the Maximum Daily Quantity determined as hereinabove provided shall never be more than two hundred ten thousand (210,000) Mcf.

In the event Buyer shall require gas in excess of the Maximum Daily Quantity hereinabove provided for, Buyer may give written notice to Seller of such increased requirements, which notice must be given at least two (2) months prior to the date when such increased daily quantity of gas will be required, stating in such notice the additional daily quantity of gas which Buyer will require. Within thirty (30) days after receipt of such notice, Seller shall notify Buyer in writing either of its election to be

prepared to deliver such additional daily quantity of gas, or that it does not desire to deliver such additional daily quantity of gas. In the event Seller elects to deliver such additional daily quantity of gas, it shall be prepared to make such



deliveries on the first (1st) day of the calendar month next succeeding the date so specified by Buyer in said notice; and from and after such date, said additional daily quantity of gas so requested by Buyer in said notice shall be added to the Maximum Daily Quantity then in effect.

B. Minimum Annual Quantity

The term "contract year" shall mean a period of twelve (12) consecutive months beginning on November 1 in any year, except that the period beginning with the first day of the billing month following the date of first delivery hereunder, and ending November 1, 1952, shall be considered a contract year.

Buyer shall take from Seller hereunder and pay Seller for quantities of gas during each contract year which are at least equal to the Annual Minimum Quantity during such contract year, or shall pay Seller, in the event Buyer does not take from Seller hereunder said Annual Minimum Quantity during such contract year, the Annual Minimum Bill provided for in Article 7 hereof. For the purposes hereof, the term "Annual Minimum Quantity" shall mean a quantity equal to seventy-two per cent (72%) of the total Mcf obtained by multiplying the Maximum Daily Quantity then in effect during such contract year by 365 (except that for the first contract year ending November 1, 1952, the multiplier shall be the number of days in said first contract year), unless and until such quantity is increased or decreased in the manner herein provided for, in which event said term shall mean such increased or decreased quantity, as the case may be.

C. Increase or Reduction in Maximum Daily Quantity and Minimum Annual Quantity

If, at any time and from time to time, during the term hereof, Seller shall be unable, for any five (5) or more consecutive days, or for a total of ten (10) or more days, whether or not consecutive, during any one billing month, to deliver to Buyer, for any reason other than dispatching variations, Unavoidable Accident, or failure of Buyer to afford Seller a reasonable opportunity to make such delivery, the quantities of gas requested by Buyer on such day or days, up to the Maximum Daily Quantity then in effect, then Buyer shall have the right, at its option, to reduce such Maximum Daily Quantity by subtracting therefrom an amount equal to the average of Seller's deficiencies in delivery on such days below said Maximum Daily Quantity. Buyer shall notify Seller in writing of its election to exercise its option to so reduce the Maximum Daily Quantity within sixty (60) days from the date its right to do so accrues, or said option shall be waived, but no such waiver shall operate or be construed as a waiver of any right to exercise said option which may arise in the future. Any reduction so made in the Maximum Daily Quantity shall be effective on the first (1st) day of the billing month immediately following the date of such notice, and such reduced Maximum Daily Quantity shall continue in effect thereafter unless and until further reduced or increased pursuant to the provisions hereof.

If, at any time, and as often as, the Maximum Daily Quantity is increased or reduced, as the case may be, pursuant to the provisions of this Article, the Annual Minimum Quantity shall likewise, and at the

same time, be increased or reduced in the same proportion that the Maximum Daily Quantity was so increased or reduced; and such increased or reduced Annual Minimum Quantity shall remain in effect thereafter unless and until further increased or reduced pursuant to the provisions hereof; provided, however, that for the contract year in which such increase or reduction occurs the increased or reduced Annual Minimum Quantity shall be the sum of (i) an amount equal to one-twelfth (1/12) of the Annual Minimum Quantity in effect prior to such increase or reduction, multiplied by the number of months in such contract year during which said unincreased or unreduced Annual Minimum Quantity was in effect, plus (ii) an amount equal to one-twelfth (1/12) of the Annual Minimum Quantity as so increased or reduced, multiplied by the number of months in such contract year during which such increased or reduced Annual Minimum Quantity was in effect (except that for the first contract year ending November 1, 1952, the fraction whose numerator is one and whose denominator is the number of months in said first contract year shall be used instead of one-twelfth (1/12)).

For the purposes of this Article, the term "Unavoidable Accident" shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraint of rulers and people, civil disturbances, explosions, breakage or accident to wells, machinery or lines of pipe, the necessity for making repairs or alterations thereto, freezing of wells or lines of pipe, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party

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claiming the existence of an unavoidable accident; provided, however, that said term shall not mean or include any cause which by the exercise of due diligence the party claiming the existence of an unavoidable accident is able to overcome; and provided, further, that in no event shall said term mean or include partial or entire failure or depletion of gas wells or sources of supply where such failure or depletion results from or is due to the exhaustion or insufficiency of gas in said wells or sources of supply.

ARTICLE 3.

The point of delivery of the gas to be delivered by Seller to Buyer hereunder shall be (i) at the outlet side of a metering station to be constructed by Seller and to be located at Buyer's Perryville Compressor Station Site in the Monroe Field, Louisiana, or, if the parties so agree, at (ii) such other point within a fifteen (15) mile radius of Buyer's said Perryville Compressor Station Site, as Buyer and Seller may mutually agree upon.

If Seller's said metering station is located on Buyer's premises, Buyer agrees to furnish to Seller, free of charge, the use of the premises to be occupied by Seller's said metering station as originally constructed or as thereafter enlarged and by any portion of Seller's pipe line which may be located on Buyer's premises, with the right of ingress and egress at all times for the purpose of installation, operation, repair and removal of said metering station or pipe line.

As between the parties hereto, Seller shall be in control and possession of gas deliverable hereunder and responsible for any damage

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or injury caused thereby until the same shall have been delivered to Buyer, after which delivery Buyer shall be

in exclusive control and possession thereof and responsible for any injury or damage caused thereby.

The gas to be delivered hereunder shall be delivered by Seller to Buyer at the herein described delivery point at the varying pressures existing in Seller's pipe line from time to time at such point of delivery and Seller agrees that such delivery pressure will not be less than four hundred lfty (450) pounds per square inch gauge.

ARTICLE 4.

Seller shall furnish, install, operate and maintain, at its own expense, at said point of delivery, the meters, instruments and equipment of standard type necessary to measure properly, in accordance with Article 5 hereof, the gas to be delivered under this contract. Seller shall likewise furnish, install, operate and maintain, at its own expense, such instruments and equipment as may be necessary at points other than the point of delivery hereunder to obtain the information to measure properly, in accordance with Article 5 hereof, the gas to be delivered under this contract. The metering and other equipment now or hereafter installed by Seller, together with any buildings now or hereafter erected by it for such equipment, shall be and remain its property.

Buyer shall have access to said metering equipment at all reasonable times, but the reading, calibration and adjustment thereof and changing of charts shall be done only by the employees or agents



of Seller. Charts and records from such metering equipment shall remain the property of Seller. Upon request of Buyer, Seller will submit to Buyer records and charts from its metering equipment, together with calculations therefrom, for Buyer's inspection and verification, subject

to return by Buyer within ten (10) days after receipt thereof, after which return the charts and records shall be kept on file by Seller for the mutual use of both parties for a period of one (1) year.

Buyer may, at its option and expense, install and operate meters, instruments and equipment of standard type to check Seller's meters, instruments and equipment, but the measurement of gas for the purpose of this contract shall be by Seller's meters only, except in cases hereinafter specifically provided to the contrary. The meters, instruments and equipment installed by Buyer shall be subject at all reasonable times to inspection or examination by Seller, but the reading calibration and adjustment thereof and changing of charts shall be done only by Buyer.

Each party shall give to the other party notice of the time of all tests of meters sufficiently in advance of the holding of the test so that the other party may conveniently have its representative present; provided, however, that if either party has given such notice to the other party and the other party is not present at the time specified, then the party giving the notice may proceed with the test as though the other party were present.

At least once each thirty (30) days on a date as near the first (1st) of each month as practicable, Seller shall calibrate its



orifice meters and recording instruments all in the presence of representatives of Buyer, as hereinabove provided in this Article, and the parties shall jointly observe any adjustments which are made to the meters, and, if the check meters hereinbefore provided for have been installed, the same shall also be calibrated by Buyer in the presence of representatives of Seller, and the parties shall jointly observe any adjustments.

If, upon any test, the percentage of inaccuracy of any

metering equipment is found to be in excess of two per cent (2%), registrations thereof shall be corrected for a period extending back to the time such inaccuracy occurred, if such time is ascertainable, and, if not ascertainable, then back one-half of the time elapsed since the last date of calibration. If, for any reason, meters are out of service or out of repair, so that the amount of gas delivered cannot be ascertained or computed from the readings thereof, the gas delivered during the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties herto upon the basis of the best data available, using the first of the following methods which is feasible: (a) by using the registration of any check meter or meters if installed and accurately registering; (b) by correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation; (c) by estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately.

ARTICLE 5.

The term "Mcf", as used herein, represents one thousand



(1,000) cubic feet of gas. A "cubic foot of gas", for the purpose of measurement of the gas delivered hereunder, is the amount of gas necessary to fill a cubic foot of space when the gas is at a base pressure of ten (10) ounces gauge pressure above fourteen and four-tents (14.4) pounds per square inch atmospheric pressure and at a base temperature of sixty (60) degrees Fahrenheit, and the gas volumes shall be computed into such units in the manner described below. Recognizing that the atmospheric pressure may vary somewhat from time to time and that the average atmospheric pressure is approximately fourteen and four-

tenths (14.4) pounds per square inch, it is agreed that for the purposes of measurement and computation, the atmospheric pressure shall be assumed to be fourteen and four-tenths (14.4) pounds per square inch, regardless of the actual atmospheric pressure at which the gas is delivered and measured. The computations of the volumes of gas measured shall be made in accordance with the following paragraphs (1) to (8) inclusive:

(1) The hourly orifice coefficient for each meter shall be calculated at the above base pressure and base temperature, at a flowing temperature of sixty (60) degrees Fahrenheit and for gas of six hundred thousandths (.600) specific gravity.

(2) Recognizing that the average flowing temperature at the orifice plate affects the calculation of the volume of gas measured and that such temperature may vary from time to time, it is agreed (a) that the temperature of the gas shall be determined by means of a recording ther-



mometer of standard manufacture acceptable to both parties and so installed that it may properly record the temperature of the gas flowing through the meter or meters, and (b) that the average of the twenty-four (24) hour record from the recording thermometer shall be deemed to be the gas temperature for that day, and the orifice coefficient as calculated in (1) above shall be corrected daily for each degree variation in the average temperature from sixty (60) degrees Fahrenheit.

(3) And further recognizing that the specific gravity of the gas affects the calculation of the volume of gas measured, and that such gravity may vary from

time to time, it is agreed that the specific gravity of the gas shall be determined by a recording gravitometer of standard manufacture acceptable to both parties and so installed by Seller that the specific gravity of the gas will be properly determined; or, if Seller does not consider it necessary to install a recording gravitometer at the point where tests are to be made, spot tests shall be made with an Edwards type gas balance, or by such other method as shall be agreed upon between the parties.

If the recording gravitometer is used, the average of the twenty-four (24) hour record for the recording instrument shall be deemed to be the specific gravity of the gas for that day and the orifice coefficient as



calculated in (1) above shall be corrected daily for each one-thousandth (.001) variation from six hundred thousandths (.600). If the spot test method is used, the specific gravity of the natural gas delivered hereunder shall be determined once monthly on a day as near the first (1st) of the month as is practicable, or as much oftener as is found necessary in practice. The result obtained from the test made on or near the first (1st) of the month shall be deemed to be the specific gravity of the gas during that billing month and the orifice coefficient as calculated in (1) shall be corrected accordingly for each one-thousandth (.001) variation from six hundred thousandths (.600). Any special test which is made shall be applicable from the day made until the next regular test or other special test is made.

(4) Exact measurements of inside diameters of pipe runs and orifices shall be obtained by means of a micrometer to the nearest one-thousandth (.001) inch,

which measurements shall be used in computations of coefficients.

(5) Pressure taps for meter installations shall be taken from pipe runs two and one-half (2½) inside pipe diameters upstream and eight (8) inside pipe diameters downstream from the orifice.

(6) All orifice meter computations required in this Article shall be made in accordance with formulae and



tables contained in Metric Metal Works Bulletin E-2 (Revised 1931). In the computations of the hourly orifice coefficient, the calculation of "X" shall be carried to six (6) decimals and "C" shall be determined to three (3) decimal places by interpolations from tables on Pages 76 and 77 of Metric Metal Works Bulletin E-2 (revised 1931). The pressure base, flowing temperature and specific gravity factors used shall consist of four (4) significant figures, unless the first (1st) digit is "1", in which case five (5) significant figures shall be used.

(7) In determining the volume of gas delivered through the orifice during a daily period, either the observation method or the orifice chart integrator shall be used in reading the meter chart. The sum of the extensions obtained from the reading or integration of the meter chart shall be multiplied by the hourly orifice coefficient, corrected in accordance with paragraphs (2) and (3) above, to obtain the gas volume for that chart.

(8) The volumes of gas as determined in the manner described above shall be adjusted to give effect to the deviation of such gas from Boyle's Law, as follows:

(a) There shall be determined the average pressure (gauge) at which the gas was delivered during the period under consideration;



(b) There shall be determined the average temperature at which the gas was delivered during the period under consideration;

(c) There shall be selected from the table of multipliers attached hereto and made a part hereof, and identified as Exhibit "A", the multiplier corresponding to the average pressure and the average temperature as determined in (a) and (b) above;

(d) The corrected volume of gas for the period under consideration shall be the result obtained by multiplying the volume of gas determined in the manner above set forth by the multiplier determined in (c) above.

If at any time the composition of the gas delivered to Buyer hereunder shall have materially changed so that the multipliers set out in said Exhibit "A" are no longer reasonable, either party may call for a review of such multipliers.

ARTICLE 6.

The gas delivered hereunder shall be merchantable gas and:

(a) Shall be dehydrated by Seller and shall in no event have a water content in excess of seven (7) pounds of water per million (1,000,000) cubic feet of gas measured at a pressure base of fourteen and seven-tenths

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(14.7) pounds per square inch and at a temperature of sixty (60) degrees Fahrenheit, as determined by dew-point apparatus approved by the Bureau of Mines.

(b) Shall be commercially free from hydrogen sulphide and shall not contain more than one (1) grain of hydrogen sulphide per hundred (100) cubic feet as determined by quantitative test after the presence of hydrogen sulphide has been indicated by qualitative test, which shall consist of exposing a strip of white filter paper recently moistened with a solution of one hundred (100) grains of lead acetate in one hundred (100) cubic centimeters of water to the gas for one and one-half (1½) minutes in an apparatus previously purged, through which the gas is flowing at the rate of approximately five (5) cubic feet per hour, the gas from the jet not impinging upon the test paper, and which qualitative test shall be deemed to be satisfied if, after this exposure, the test paper is found not distinctly darker than a second paper freshly moistened with a solution not exposed to the gas.

(c) Shall not contain more than twenty (20) grains of total sulphur per one hundred (100) cubic feet.

(d) Shall not contain in excess of:

(i) Three per cent (3%) by volume of carbon dioxide;

(ii) Two percent (2%) by volume of oxygen; or

(iii) Two-tenths (0.2) gallons per thousand (1,000) cubic feet of those certain liquefiable hydrocarbons commonly referred to as natural gasoline,

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as determined by the charcoal adsorption method as prescribed by the American Gas Association in its Testing Code # 101, effective January 1, 1933.

In the event the Btu content of gas tendered for delivery hereunder falls below 950 Btu per cubic foot, Buyer shall have the option to refuse to accept such gas so long as said total Btu content remains below 950 Btu per cubic foot.

The Btu content of the gas delivered hereunder shall be determined by Seller either by taking a spot sample or by using a Thomas or other standard type recording calorimeter. The spot sample shall be taken, or the recording calorimeter shall be so located, at a suitable point on Seller's line in order that the Btu content of the gas delivered hereunder may be obtained.

In the event the spot sample method is used, the sample of the gas delivered hereunder shall be taken once monthly, on a day as near the first (1st) of the month as is practicable, or as much oftener as is found necessary in practice and Buyer shall have the right to witness such tests. The Btu content obtained from the sample shall be corrected to the basis of measurement provided in Article 5 hereof, and corrected from a saturated basis to the moisture content of the gas delivered, the result being the Btu content of the gas delivered during that billing month.

In the event a recording calorimeter is used, the monthly average of the daily readings from the record so obtained shall be corrected to the basis of measurement provided in Article 5 hereof,



and corrected from a saturated basis to the average moisture content of the gas delivered, the result being the Btu content of the gas delivered during that billing month. Seller shall test the accuracy of said calorimeter at regular intervals of reasonable lengths, and Buyer shall have the right to witness such tests.

The moisture content of the gas delivered hereunder shall be determined at least once monthly, on a day as near the

first (1st) of the month as is practicable, by such methods as may be mutually agreed upon and shall be properly taken into account in determining the gross Btu content of the gas delivered under either of the method above set forth.

Except as otherwise specifically provided to the contrary in this Article, all measurements of gas required in this Article shall be at a temperature of sixty (60) degrees Fahrenheit and at an absolute pressure equivalent to thirty inches (30") of mercury at thirty-two (32) degrees Fahrenheit. In addition to meeting the above specifications, the gas delivered hereunder shall be commercially free from dust, gum, gum-forming constituents, or other liquid or solid matter which might become separated from the gas *in the course of transportation through pipe lines.*

ARTICLE 7.

The prices to be paid by Buyer to Seller for all gas which Buyer takes hereunder or is obligated to pay for, even if not taken, shall be as follows:

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(A) During each billing month beginning with the first day of the billing month immediately following the date of first delivery hereunder and ending on March 1, 1957, (hereinafter sometimes referred to as the "Initial Period"), the price shall consist of a Demand Charge and a Commodity Charge as hereinafter set forth:

(i) Demand Charge: $1.30 per Mcf of Maximum Daily Quantity in effect during the billing month.

(ii) Demand Charge: $1.30 per Mcf of Maximum delivered.

(iii) Demand Charge Adjustment: If Seller, after being afforded a reasonable opportunity to do so,

(6811)

was unable to deliver to Buyer, during any one or more days during the billing month, the quantities of gas requested by Buyer on such day or days, up to the Maximum Daily Quantity in effect for such billing month, then the Demand Charge for such billing month, computed as above provided, shall be reduced by subtracting therefrom an amount determined by multiplying 4.27¢ by the total aggregate number of Mcf of Seller's deficiencies in delivery on such day or days.

(iv) Annual Minimum Bill: The Annual Minimum Bill for any contract year shall consist of (a) the sum of all the monthly demand Charges, computed as above provided, during such contract year, plus (b) the amount determined by multiplying the Commodity Charge price of 12.5¢

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by the number of Mcf constituting the Annual Minimum Quantity for such contract year; provided, however, that if Seller, after being afforded a reasonable opportunity to do so, was unable to delivery to Buyer, during any one or more days in such contract year, the quantities of gas requested by Buyer on such day or days, up to the Maximum Daily Quantity in effect on such day or days, then the Annual Minimum Bill for such contract year, computed as above provided, shall be reduced by subtracting therefrom an amount determined by multiplying the Commodity Charge price of 12.5¢ by the total aggregate number of Mcf of Seller's deficiencies in delivery on such day or days.

It is agreed, however, that during the first billing month, as defined in Article 9 hereof, the price for each Mcf of gas

delivered hereunder shall be sixteen and seventy-seven one hundredths cents (16.77¢).

(B) During each succeeding five (5) year period of this contract, after the expiration of the Initial Period, a price determined in the manner hereinafter provided for in this Subdivision (B).

The parties recognize that the price specified in Subdivision (A) of this Article, payable by Buyer to Seller for all gas delivered hereunder during the Initial Period, has been and is based on certain factors and elements of estimated costs to Seller (as determined by Seller), vis: (i) the estimated field cost to Seller of the gas to be delivered hereunder during said Initial Period, (ii) the estimated costs to Seller of gathering, transporting and delivering such gas to Buyer hereunder during said Initial Period through facilities



already installed, or proposed to be installed during the Initial Period, and (iii) an adequate return to Seller, and such other relevant factors applicable to such gas and the transportation and delivery thereof as are usually or customarily taken into consideration by sellers of natural gas, or by regulatory bodies having jurisdiction in determining such costs.

It is the intention and purpose of the parties hereto that the respective prices to be paid by Buyer to Seller for all gas delivered hereunder during each succeeding five (5) year period hereof, after the expiration of the Initial Period, shall be based, in like manner, on the same factors and elements of estimated costs to Seller, as specified in clauses (i) to (iii), both inclusive, of the next above paragraph, but applicable to the succeeding five (5) year period in question; and, accordingly, that the price payable by Buyer for gas delivered

hereunder during the five (5) year period hereof which immediately precedes the five (5) year period for which the price determination by Seller is to be made, shall be adjusted (by appropriate revision by Seller), to reflect and give effect to the amount by which Seller's said estimated costs during the succeeding five year period in question exceed, or are less than, Seller's said estimated costs during the immediately preceding five (5) year period, and such adjusted price shall be the price payable by Buyer for all gas delivered hereunder during the succeeding five (5) year period in question.

Accordingly, Seller, not more than one hundred eighty (180) days prior to the beginning of each succeeding five (5) year



period, shall determine whether, and to what extent, the aggregate of Seller's said estimated costs during the succeeding five (5) year period in question will exceed, or be less than, the aggregate of Seller's said estimated costs during the five (5) year period next preceding such succeeding five (5) year period in question. When such determination has been made, the price paid hereunder by Buyer during the five (5) year period next preceding such five (5) year period in question, shall be revised to give effect to the amount of the increase or decrease, as the case may be, in Seller's said estimated costs, as so determined by Seller, and the price resulting from such revision shall be the price payable by Buyer for all gas delivered hereunder during such succeeding five (5) year period in question; provided, however, that as and when any such determination of estimated costs has been made by Seller, and the price to be paid by Buyer for gas delivered hereunder has been revised and determined by Seller,

as hereinabove provided, Seller shall furnish to Buyer, at least one hundred twenty (120) days prior to the beginning of the succeeding five (5) year period in question, a statement in writing setting forth (a) the factors and elements of costs taken into consideration by Seller in determining its said estimated costs, and (b) the price, as revised, to be paid by Buyer during such succeeding five (5) year period in question. In the event Buyer is not satisfied that any such revised price has been correctly determined by Seller, Buyer shall have the



right to contest the correctness of such revised price in any court, commission or other legal or regulatory body having jurisdiction; provided, however, that during the pendency of any such contest Buyer shall pay the said revised price determined by Seller, which is then being contested by Buyer, and at the final conclusion of such contest appropriate adjustment, if any be due, will be made between Seller and Buyer.

ARTICLE 8.

Buyer agrees to reimburse Seller for all taxes (other than such specific taxes as were in effect on May 1, 1950, up to the respective rates thereof on said date, which Seller was then paying directly or indirectly) which may be levied upon and paid for by Seller, or which Seller under contractual obligation pays to the party on which such taxes are levied, on or with respect to the gas delivered hereunder.

The term "taxes" as used herein shall mean any tax (other than ad valorem, income, excess profits, or capital stock taxes), license, fee or charge now or hereafter levied, assessed or made by any governmental authority on the

(6817)

gas itself or on the act, right or privilege of production, severance, gathering, transportation, handling,

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sale or delivery of gas which is measured by the volume, value or sales price of the gas in question; provided, however, that the term "tax" shall not be deemed to include any general franchise tax imposed on corporations on account of their corporate existence or on their right to do business within the State as a foreign corporation.

The tax reimbursement herein provided for shall, in no wise be considered a part of, or increase in, the monthly rate hereinabove set forth but shall be a direct obligation of Buyer.

ARTICLE 9.

For the purpose of billing and accounting for gas delivered hereunder, the day shall begin at seven (7:00 o'clock, A.M., and extend to seven (7:00 o'clock, A.M., on the following calendar day, and the month (herein called "billing month") shall begin at seven (7:00 o'clock, A.M., on the first (1st) day of the calendar month and extend to seven (7:00) o'clock, A.M., on the first (1st) day of the following calendar month, except that the first billing month under this contract shall begin at seven (7:00) o'clock, A.M., on the date gas is first delivered hereunder and extend to seven (7:00) o'clock, A.M., on the first day of the following calendar month. Each party shall read all meters daily at seven (7:00) o'clock, A.M., as nearly as practicable.

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On or before the tenth (10) day of each calendar month, Seller shall render to Buyer, at its office in St. Louis, Missouri, a statement of the amount of gas delivered by Seller to Buyer during the preceding billing month, and shall also render bill for all gas so delivered.

On or before the twentieth (20th) day of such calendar month, Buyer shall make payment to Seller at Seller's office at Shreveport, Louisiana or such other office as may from time to time be designated in writing by Seller, for all gas delivered hereunder to Buyer during the preceding billing month.

Should Buyer fail to take the quantities of gas which it is obligated to take during any contract year, then Seller shall, within sixty (60) days from the end of such contract year, render to Buyer a bill for the unpaid amount of the Annual Minimum Bill provided for in Article 7 hereof, and the Buyer shall make payment to Seller therefor at Seller's office at Shreveport, Louisiana, within sixty (60) days from the date of billing.

Should Buyer fail to pay any amount due to Seller when the same is due, interest thereon shall accrue at the rate of six per cent (6%) per annum from the date when such amount is due until the same is



paid. If such failure to pay continues for sixty (60) days, Seller may suspend deliveries of gas hereunder, and the exercise of such right shall be in addition to any and all other remedies available to Seller.

Each party shall have the right at reasonable hours to examine the records and charts of the other party to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to the provisions of any Article hereof. If any such examination reveals any inaccuracy in the charges theretofore made, the necessary adjustments in such charges and payments shall be promptly made.

ARTICLE 10.

Buyer specifically recognizes the fact that Seller delivers gas to (a) gas utilities, and pipe line companies (including

Buyer) which deliver gas to gas utilities, for resale to domestic and industrial consumers, (b) steam electric power plants for use in generating electricity which is sold to domestic consumers, and (c) industrial customers. In the event a shortage of gas renders Seller unable to supply the full gas requirements of all of its customers, including Buyer, then it is mutually agreed that Seller may, without liability to Buyer prorate its gas supply in the manner hereinafter set forth after first making allowance for all gas required by Seller for the operation of any of its facilities. The gas requirements of gas utilities, and pipe line companies (including Buyer) delivering gas to gas utilities, which sell gas to domestic consumers (but only to the extent of gas required



for resale to such domestic consumers) shall first be supplied by Seller. If Seller is unable to supply gas for all the requirements of such gas utilities and pipe line companies delivering gas to gas utilities, for resale to domestic consumers, then gas for such requirements shall be supplied ratably. In the event Seller is able to supply gas for all the requirements of such gas utilities, and pipe line companies (including Buyer) delivering gas to gas utilities, for resale to domestic consumers, then there shall next be supplied the gas requirements of steam electric power plants using gas for the generation of electricity which is sold to domestic consumers, whether such power plants purchase their requirements from Seller or from gas utilities or from pipe line companies (including Buyer), purchasing their requirements from Seller; and, if Seller does not have sufficient gas to supply all of the requirements of said power plants, then said requirements shall be supplied ratably. After the above requirements have been supplied, the remaining gas supply, if any, shall be prorated by Seller among its other customers, including Buyer and other pipe

line companies and gas utilities, to the extent of gas sold by them to their other consumers. In the event of any shortage of gas as in this Article provided, Buyer agrees that it will discontinue service of gas to its consumers during the period of any such shortage to the extent which may be necessary consistent to the provisions hereof.

It is recognized that in certain instances Seller supplies less than the full requirements of certain of its customers, including Buyer, and it is the intent of this Article that any priority granted



hereunder shall run only to that part of the requirements of each ultimate consumer as is being currently supplied by gas furnished by Seller, directly or indirectly.

ARTICLE 11.

In the event of either party hereto being rendered unable wholly or in part by force majeure to carry out its obligations under this contract, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of

pipe, the necessity for making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such



party is unable to prevent or overcome; such term shall likewise include (a), in those instances where either party hereto is required to obtain servitudes, rights-of-way grants, permits or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, rights-of-way grants, permits or licenses, and (b), in those instances where either party is required to furnish materials and supplies for the purpose of constructing or maintining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permissions.

It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

ARTICLE 12.

If either party shall fail to perform any of the covenants or obligations imposed upon it under and by virtue of this contract (except

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where such failure shall be excused under any of the provisions of this contract), then in such event the other party may, at its option, terminate this contract by proceeding as follows: The party not in default shall cause a written notice to be served on the party in default, stating specifically the cause for terminating this contract and declaring it to be the intention of the party giving the notice to terminate the same; thereupon, the party in default shall have thirty (30) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating the contract, and if within said period of thirty (30) days the party in default does so remedy and remove said cause or causes and fully indemnify the party not in default for any and all consequences of such breach, then such notice shall be withdrawn and this contract shall continue in full force and effect. In case the party in default does not so remedy and remove the cause or causes and does not indemnify the party giving the notice for any and all consequences of such breach, within said period of thirty (30) days, then this contract shall become null and void from and after the expiration of said period. Any cancellation of this contract pursuant to the provisions of this Article shall be without prejudice to the right of the party not in default to collect any amounts then due it and without waiver of any other remedy to which the party not in default may be entitled for violation of this contract.

ARTICLE 13.

Seller warrants generally the title to all gas delivered

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hereunder and agrees to indemnify Buyer from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to said gas or to royalties or charges thereon.

ARTICLE 14.

This agreement is subject to all present and future valid orders, rules and regulations of any regulatory body having jurisdiction.

ARTICLE 15.

This agreement shall be in force and effect for a primary term commencing on the date of first delivery hereunder and ending March 1, 1977, and shall continue in force and effect thereafter for successive periods of one (1) year each, unless or until terminated either by Seller or by Buyer upon twelve (12) months' prior written notice to the other party hereto, specifying a termination date at the end of such primary term or of any yearly period thereafter.

Buyer agrees to prosecute with due diligence the construction of the facilities required to enable Buyer to accept delivery from Seller at the point of delivery herein specified of the quantities of gas contemplated by this agreement.

Seller agrees that it will prosecute with due diligence the construction of the facilities required to enable Seller to deliver to Buyer at the point of delivery herein specified the quantities of gas contemplated by this agreement.

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Delivery of gas shall commence hereunder when the facilities mentioned in the next two preceding paragraphs have been completed and placed in operation. Each party agrees to give prompt, written notice to the other of the notifying party's completion of said necessary facilities.

ARTICLE 16.

This agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

In Witness Whereof, the parties hereto have executed this agreement in duplicate originals on the day and year first hereinabove written.

UNITED GAS PIPE LINE COMPANY
By M. A. Abernathy, Vice-President, Seller

ATTEST:
B. M. BYRD,
Asst. Secretary

MISSISSIPPI RIVER FUEL CORPORATION
By W. G. Marbury, President, Buyer

ATTEST:
A. W. MANLEY,
Secretary

• • • • • • • • • • •

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UNITED GAS PIPE LINE COMPANY
Supplement No. 1
Effective Date: 4-24-52
Filing Date: 3-24-52
to
Rate Schedule FPC No. 115

UNITED GAS PIPE LINE COMPANY

Shreveport 92, Louisiana

March 24, 1952

Docketed March 24, 1952

Federal Power Commission
Washington 25, D. C.

Re: Docket No. G-1447 *United Gas Pipe Line Company*

Gentlemen:

This is in reply to your letter of March 14, 1952, rejecting the contracts between United Gas Pipe Line Company and Texas Eastern Transmission Corporation and Mississippi River Fuel Corporation, each dated Desember 1, 1951, tendered for filing as rate schedule by our two letters of February 13, 1952.

In conformity with such letter of March 14, 1952, we retender herewith for filing the aforesaid contracts and submit herewith the following as a supplement to the filings:

(1) With respect to the escalator clauses contained in Articles 7(B) and 8 of said contracts, United Gas Pipe Line Company does hereby bindingly assert and stipulate that such articles have not been invoked and any invocation or operation of said articles to change the rates and charges specified in Article 7(A) thereof can and will be made only in the manner specified in the Natural Gas Act and the Commission's applicable rules, regulations, and orders thereunder. To the

extent that the inclusion of Articles 7(B) and 8 in the aforesaid contracts is inconsistent with Part 154 of the Commission's applicable General Rules and Regulations, it is respectfully requested that they be waived.

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(2) With respect to the information required by the Commission's General Rules and Regulations to be supplied with the aforesaid contracts, we respectfully refer the Commission to the relevant evidence of record on this point in the proceeding upon the application of United Gas Pipe Line Company at Docket No. G-1447 and to the Commission's Opinion No. 206 and accompanying order issued February 27, 1951, and hereby request that such evidence and the opinion and order be incorporated herein by reference.

It is respectfully requested that the Commission take prompt action with respect to this filing.

Yours very truly,

UNITED GAS PIPE LINE COMPANY
By M. A. Abernathy, Vice-President

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# VOL.

# III

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JOHN T. FEY, Clerk

**JOINT APPENDIX**

IN THE

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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## No. 13,199

---

MISSISSIPPI RIVER FUEL CORPORATION,
*Petitioner,*

v.

FEDERAL POWER COMMISSION,
*Respondent.*

---

**Petition for Review of Order of the Federal Power Commission**

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**Volume III**

**Docket Items**

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IN THE

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 13,199

---

MISSISSIPPI RIVER FUEL CORPORATION,
*Petitioner,*

v.

FEDERAL POWER COMMISSION,
*Respondent.*

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**Petition for Review of Order of the Federal Power Commission**

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## JOINT APPENDIX

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**Volume III**

**Docket Items**

**(Joint Appendix Pages 739-1030; Record Pages 7533-8575)**

7533

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Nelson Lee Smith, Chairman; Thomas C. Buchanan, Claude L. Draper, Leland Olds and Harrington Wimberly.

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October 12, 1948

Docket No. G-1142

100-2 FORMAL

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In the Matter of

UNITED GAS PIPE LINE COMPANY

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**Order Instituting Rate Investigation**

It appearing to the Commission that:

(a) United Gas Pipe Line Company (United Gas) owns and operates a natural-gas transmission pipeline system located in the States of Texas, Mississippi, Louisiana, Alabama and Florida, and by such operations Applicant is engaged in the transportation and sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 803).

(b) On the basis of data available to the Commission, the rates, charges, services or classifications for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission by United Gas Pipe Line Company may be unjust, unreasonable, unduly discriminatory or preferential.

The Commission *finds* that:

It is necessary and proper in the public interest, and to aid in the enforcement of the provisions of the Natural Gas Act, that an investigation be instituted by the Commission into and concerning any rate, charge, service or classification, demanded, observed, charged or collected by United Gas Pipe Line Company, for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and any rule, regulation, practice, or contract affecting such rate, charge, service or classification.

The Commission, on its own motion, *orders* that:

An investigation be and it hereby is instituted for the purpose of enabling the Commission:

(A) To determine whether any rate, charge, service, or classification demanded, observed, charged or collected



by United Gas Pipe Line Company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission or any rule, regulation, practice or contract affecting such rate, charge, service, or classification, is unjust, unreasonable, unduly discriminatory or preferential;

(B) If, after hearing, it shall find that any such rates, charges, services, classifications, rules, regula-

tions, practices or contracts are unjust, unreasonable, unduly discriminatory or preferential, to determine and fix by appropriate order or orders, just, reasonable, non-discriminatory or non-preferential rates, charges, services, classifications, rules, regulations, practices or contracts to be thereafter observed and in force.

By the Commission.

Leon M. Fuquay, Secretary

Date of Issuance: October 13, 1948

**7536**

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

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Docket No. G-1142

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In the Matter of

UNITED GAS PIPE LINE COMPANY

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**Petition of Mississippi River Fuel Corporation to Intervene**

Comes now the Petitioner, Mississippi River Fuel Corporation (Mississippi) and respectfully represents that it has a vital interest in the rate proceedings of United Gas Pipe Line Company (United) in the above docket, that it is not adequately represented by any other participant in this proceeding, and that it desires to intervene herein and be permitted to participate in all the proceedings in respect of said docket; and in support of this its petition alleges:

1. Mississippi, a Delaware corporation, is a natural gas company under the Natural Gas Act and owns and operates a natural gas transmission pipe line system commencing with a main compressor station at Perryville, Louisiana, in the Monroe gas field, and continuing with main trunk transmission lines through the States of Arkansas and Missouri into the State of Illinois. It transports and sells gas to utility distributing companies for resale and



also sells gas directly to industrial consumers for consumption. Mississippi has been issued a certificate of public convenience and necessity for continued operation of its property under Docket No. G-291 and has received certificates for main additions to its facilities under Docket Nos. G-713, G-863 and G-1281.

2. Mississippi respectfully submits that it should be permitted to file this petition for intervention and have the prayer of the same granted for the following reasons:

a. Mississippi is presently receiving large volumes of gas from United pursuant to a contract with that supplier. Reference is made to Item E in Docket No. G-1281 for the terms of the contract between United and Mississippi.

b. Mississippi ,under date of August 11, 1950 entered into a "Precedent Agreement" with United under which United agrees to enter into a gas sales contract with Mississippi providing for the sale of natural gas to Mississippi in an additional minimum daily quantity of 100,000 Mcf (and, under certain circumstances, up to 210,000 Mcf per day) to commence on February 2, 1952 contingent upon United obtaining a certificate of public convenience and necessity for the

construction and operation of the facilities proposed in the application filed in Docket No. G-1447, and the satisfactory financing

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of the project. The Commission on February 27, 1951, issued a certificate of public convenience and necessity to United authorizing the construction and operation of the facilities which were the subject of Docket No. G-1447 (Opinion No. 206).

c. Reference to the evidence introduced in Docket No. G-1281 (particularly, Exhibit 13), and the Commission's opinions Nos. 198 and 198-A issued July 28 and August 23, 1950 will disclose that Mississippi is dependent in large measure for its gas supply upon United Gas Pipe Line Company.

Accordingly, any action by the Commission affecting the rates of United is of vital concern to Mississippi; and it is necessary in the interest of the public served by Mississippi that it be permitted to intervene in this proceeding.

WHEREFORE, Mississippi respectfully prays that it be permitted to intervene in the above entitled proceeding and be treated as a party thereto with the right to receive all notices and appear at conferences, hearings, and at the taking of any testimony in said docket, and to produce and cross-examine witnesses and to be heard at said hearing and upon brief and oral argument, and otherwise be granted full rights of a party in the premises.

Respectfully submitted,

MISSISSIPPI RIVER FUEL CORPORATION
By W. G. Marbury, President

# 7541

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Thomas C. Buchanan, Chairman; Dale E. Doty, Claude L. Draper, Nelson Lee Smith and Harrington Wimberly.

November 25, 1952

Docket Nos. G-1142, G-1508, G-2019 and G-2074

In the Matters of

UNITED GAS PIPE LINE COMPANY

**Order Consolidating Proceedings, Fixing Date of Hearing, Specifying Procedure, and Permitting Intervention**

By order of October 12, 1948, at Docket No. G-1142, the Commission on its own motion, instituted an investigation for the purpose of enabling it to determine, among other things, whether any rates charged by United Gas Pipe Line Company (United) for the sale of natural gas subject to the jurisdiction of the Commission are unjust, unreasonable, unduly discriminatory or preferential; and if, after hearing, it shall find that any such rates are unjust, unreasonable, unduly discriminatory or preferential, to fix just, reasonable, nondiscriminatory or nonpreferential rates to be thereafter observed and in force.

By order issued October 16, 1950, at Docket No. G-1508, the Commission required United to file with the Commission in conformity with Part 154 of the Commission's General Rules and Regulations a tariff constituting a restatement of all its effective schedules of rates, charges, classifications, practices, regulations and contracts for the transportation or sale of natural gas subject to the jurisdiction of the Commission, except as otherwise permitted

by said Part, on or before January 2, 1951, or to show good cause why it should not file such a tariff.

By order issued November 30, 1950, the Commission consolidated the proceedings at Docket Nos. G-1142 and G-1508 for purposes of hearing. Later, by order issued April 25, 1951, the hearing fixed to commence upon such consolidated proceedings was postponed to a date and place to be thereafter fixed by further order of the Commission.

By its order issued August 1, 1952, at Docket No. G-2019, the Commission suspended, in part, the operation of a rate tariff—designated FPC Gas Tariff, Original Volume No. 1—tendered for filing on July 3, 1952, by United Gas Pipe Line Company (United) so far as it related to proposed Rate Schedules PL-3, T-1, T-2, and T-3, including the applicable General Terms and Conditions together with preexisting contract statements pertinent



thereto, as well as certain proposed notices of cancellation listed in Appendix A to such order.

By its order issued October 15, 1952, at Docket No. G-2074, the Commission suspended the operation of proposed First Revised Sheet Nos. 14 and 15 to United's FPC Gas Tariff, Original Volume No. 1; consolidated the proceeding upon the rate increase application at Docket No. G-2074 with that at Docket No. G-2019 for purposes of hearing; and ordered that a public hearing be held at a time and place and at a date to be fixed by further order of the Commission concerning the lawfulness of the rates, charges, classifications, or services, and concerning the lawfulness of proposed notices of cancellation, subject to the jurisdiction of the Commission, as set forth in the suspended matters.

On September 22 and October 9, 1952, petitions seeking leave to intervene in the proceeding upon the rate increase application at Docket No. G-2019 were filed by Mississippi

River Fuel Corporation and Southern Natural Gas Company, respectively.

It appears desirable to consolidate the rate investigation proceeding at Docket No. G-1142 and the show cause proceeding at Docket No. G-1508 with the suspension proceedings at Docket Nos. G-2019 and G-2074 so that issues raised by these various proceedings may be heard together.

The Commission *finds:*

(1) Good cause exists for further consolidating the proceedings at Docket Nos. G-1142 and G-1508 with the consolidated proceedings at Docket Nos. G-2019 and G-2074 for purposes of hearing.

(2) A public hearing in these proceedings should be held at the time and place and at the date hereinafter designated.

(3) It is necessary and appropriate to carry out the provisions of the Natural Gas Act, and it is in the public interest, that the procedure hereinafter prescribed shall be followed at the hearing in order to conduct these proceedings with reasonable dispatch.

(4) The participation of Mississippi River Fuel Corporation and Southern Natural Gas Company in the proceeding at Docket No. G-2019 may be in the public interest.

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The Commission *orders:*

(A) The above-entitled proceedings be and they hereby are consolidated for purposes of hearing.

(B) A public hearing be held commencing on December 15, 1952, at 10:00 a.m. (EST) in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue, N. W., Washington, D. C., concerning the matters involved and the issues raised by the proceedings and pleadings at Docket Nos. G-1142

and G-1508; concerning the lawfulness of the rates, charges, and classifications, subject to the jurisdiction of the Commission, as set forth in Rate Schedules PL-3, T-1, T-2, and T-3, including the applicable General Terms and Conditions together with the pre-existing contract statements pertinent thereto, of FPC Gas Tariff, Original Volume No. 1, filed on July 3, 1952, by United Gas Pipe Line Company; concerning the lawfulness of the proposed notices of cancellation set forth in Appendix A to the order issued August 1, 1952, at Docket No. G-2019; and concerning the lawfulness of the rates, charges, and classifications, subject to the jurisdiction of the Commission, as set forth in First Revised Sheet Nos. 14 and 15 of United's aforesaid gas tariff, and as filed at Docket No. G-2074.

(C) United Gas Pipe Line Company shall go forward first with the presentation of its evidence at Docket Nos. G-1142, G-1508, G-2019 and G-2074.

(D) After United Gas Pipe Line Company has concluded the presentation of its evidence in the consolidated dockets, other parties, including Counsel for the Staff of the Commission shall conduct as much of their cross-examination as they are then prepared to undertake. Thereafter, the Presiding Examiner shall recess the hearing to a date to be fixed by further order of the Commission, in order to



permit such preparation for the remainder of their cross-examination as the facts and circumstances may warrant.

(E) Interested State commissions may participate as provided by Sections 1.8 and 1.37(f) [18 CFR 1.37(f)] of the Commission's Rules of Practice and Procedure.

(F) Petitioners, Mississippi River Fuel Corporation and Southern Natural Gas Company, be and they are hereby permitted to become interveners in the proceeding at Docket No. G-2019, subject to the Rules and Regulations of the Commission: *Provided, however,* That the participation of such interveners shall be limited to matters affecting asserted rights and interests specifically set forth in such petitions for leave to intervene: and *Provided, further,* That admission of such interveners shall not be construed as recognition by the Commission that such interveners might be aggrieved because of any order of the Commission entered in the proceeding at Docket No. G-2019.

By the Commission.

LEON M. FUQUAY,
*Secretary.*

Date of Issuance: November 26, 1952

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## 7545

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Before Commissioners: Thomas C. Buchanan, Chairman; Dale E. Doty, Claude L. Draper, Nelson Lee Smith and Harrington Wimberly.

February 5, 1953

Docket Nos. G-1142, G-2019

In the Matters of

UNITED GAS PIPE LINE COMPANY

**Order Permitting Intervention**

Petitions seeking leave to intervene in the following proceeding were filed on the dates hereinafter indicated:

| Petitioner | Docket No. | Date Filed |
|---|---|---|
| Mississippi River Fuel Corporation | G-1142 | June 28, 1951 |
| Texas Gas Transmission Corporation | G-2019 | January 19, 1953 |

The Commission *finds:*

The participation of the above-named petitioners in the above-designated proceedings may be in the public interest.

The Commission *orders:*

The above-named petitioners be and the same hereby are permitted to become interveners in the above-designated proceedings, subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such interveners in such proceedings shall be limited to matters affecting asserted rights and interests specifically set forth in such petitions for leave to intervene: and *Provided, further,* That the admission of such interveners shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order of the Commission entered in such proceedings.

By the Commission.

LEON M. FUQUAY,
Leon M. Fuquay,
*Secretary.*

Date of Issuance: February 9, 1953

# 7570

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Nelson Lee Smith, Seaborn L. Digby and Frederick Stueck.

Docket Nos. G-1142, G-1508, G-2019, G-2074, G-2210, G-2220, and G-2378

In the Matters of

UNITED GAS PIPE LINE COMPANY

**Opinion No. 277**

**Opinion and Order Approving Proposed Rates and Providing for Further Hearings**

These are consolidated rate proceedings involving all the rates and charges for the sale or transportation of natural gas by United Gas Pipe Line Company (United) subject to the jurisdiction of the Commission. The record herein has been certified to us for consideration of a proposed settlement as stated on the record by Staff Counsel in open hearing.

The proceeding at Docket No. G-1142 is an investigation of United's rates and charges for the transportation or sale of natural gas for resale, subject to the jurisdiction of the Commission, initiated by the Commission by order of October 12, 1948, pursuant to Section 5(a) of the Natural Gas Act, in order to determine whether such rates and charges are just and reasonable, and if after hearing, they are found to be unjust and unreasonable, to fix just and reasonable rates and charges.

The proceeding at Docket No. G-1508 arose on an order of the Commission issued October 16, 1950, requiring United to file on or before

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January 2, 1951, a restatement of its effective rates, charges, classifications, practices, regulations and contracts for the transportation or sale of natural gas for resale, subject to the jurisdiction of the Commission, in the form required by Order No. 144, issued October 30, 1948, amending Part 154 of the General Rules and Regulations governing the form, composition, filing and posting of rate schedules and tariffs. By order issued November 30, 1950, the proceeding at Docket No. G-1508 was consolidated with that at Docket No. G-1142.

On July 3, 1952, United filed at Docket No. G-2019, its conversion tariff designated United's FPC Gas Tariff, Original Volumes Nos. 1 and 2. Such filing amounted to substantial compliance with the requirements of Order No. 144 and the Commission's show cause order at Docket No. G-1508. It appears, therefore, that for the purposes of the settlement of these proceedings the issues involved at Docket No. G-1508 must be considered satisfied and the proceedings therein terminated.

Additionally, Docket No. G-2019 is a proceeding with respect to a proposed increase in rates and charges by United to five natural-gas companies amounting to approximately $9,500,000 annually, based on estimated sales for the twelve month period ending April 30, 1953.[1] The rates proposed to be increased are those included in Rate Schedules PL-3, T-1, T-2, and T-3.

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The Commission, by order issued August 1, 1952, at Docket No. G-2019, pursuant to the authority of Section 4(e) of the Act, suspended United's proposed rate sched-

[1] The five companies are Mississippi River Fuel Corporation, Southern Natural Gas Company, Tennessee Gas Transmission Company, Texas Gas Transmission Corporation, and Texas Eastern Transmission Corporation.

ules PL-3, T-1, T-2, and T-3, and certain proposed notices of cancellation of rate schedules United asserted were no longer subject to the jurisdiction of the Commission, deferring their use until January 3, 1953, and until such further time as such schedules and cancellation notices might be made effective in the manner prescribed by the Act. Other provisions of the conversion tariff not related to the proposed increases or cancellation notices were permitted to become effective as of August 3, 1952.

On September 16, 1952, United filed First Revised Sheets Nos. 14 and 15 to its FPC Gas Tariff, Original Volume No. 1, proposing a rate increase of approximately $131,258 annually, to United Gas Corporation, its parent, for resale in fifteen communities located in northwest Mississippi, based upon estimated sales for the year ending September 1953. The Commission, by order issued October 15, 1952, at Docket No. G-2074, pursuant to Section 4(e) of the Act, suspended such proposed increase until March 17, 1953, and consolidated the proceeding upon the proposed increases at Docket No. G-2019 with that at Docket No. G-2074. Subsequently, by order issued November 26, 1952, the Commission consolidated the two suspension proceedings at Docket Nos. G-2019 and G-2074, with the rate investigation proceeding at Docket No. G-1142 and the show-cause proceeding at Docket No. G-1508.

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On June 24, 1953, United filed First Revised Sheets Nos. 1, 4, 5, 6, 7, 16, 32, 40, 118, 119, and 120, and Second Revised Sheets Nos. 23, 31, and 39 to its FPC Gas Tariff, Original Volume No. 1, containing proposed increased rates and charges for certain town-border sales of $1,778,000 annually based on estimated sales for the year 1953. The Commission, by order issued July 10, 1953, at Docket No. G-2210, pursuant to Section 4(e) of the Act, suspended the effectiveness of the proposed increases

until December 25, 1953, except those contained in First Revised Sheets Nos. 32 and 40 and Second Revised Sheets Nos. 31 and 39 applicable to sales for resale for industrial use only which were permitted to take effect as of July 25, 1953, by reason of the proviso of Section 4(e).[2] By the same order the Commission consolidated the proceeding upon the rate increases at Docket No. G-2210 with the proceedings at Docket Nos. G-1142, G-1508, G-2019, and G-2074.

On June 30, 1953, United filed First Revised Sheets Nos. 11-A and 28-A to its FPC Gas Tariff, Original Volume No. 1, proposing to cancel its Rate Schedules DG-4J and G-4J as filed on June 29, 1953, in compliance with the Commission's Opinion No. 252 and accompanying order issued June 1, 1953, *In the Matter of Willmut Gas & Oil Company, et al.*, v. *United Gas Pipe Line Company*, Docket No. G-1158. The purpose of the



June 30, 1953, filing was to eliminate the rate made available to Willmut Gas & Oil Company by compliance with the June 1, 1953 order at Docket No. G-1158 and to make effective as to Willmut Gas & Oil Company the increased rates and charges contained in Rate Schedules DG-J and G-J filed at Docket No. G-2210. The Commission, by order issued July 31, 1953, at Docket No. G-2220, pursuant to Section 4(e) of the Act, suspended the effectiveness of United's First Revised Sheets Nos. 11-A and 28-A until January 1, 1954, and consolidated the proceeding upon the proposed cancellations at Docket No. G-2220 with the proceedings theretofore consolidated at Docket Nos. G-1142, G-1508, G-2019, G-2074, and G-2210.

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[2] The proviso of Section 4(e) referred to, specifies: "That the Commission shall not have authority to suspend the rate, charge, classification or service for the sale of natural gas for resale for industrial use only."

By order issued October 22, 1953, at Docket No. G-2074, the Commission permitted United to file Second Revised Sheet No. 14 and Original Sheets Nos. 40-A and 40-B to its FPC Gas Tariff, Original Volume No. 1, to be effective as of July 28, 1953, in substitution for the sheets previously suspended in that proceeding by order issued October 15, 1952. The substitution reflected a reduction in the amount of the increase proposed by United to United Gas Corporation at Docket No. G-2074 from $131,258 to approximately $18,000 annually.

On January 25, 1954, United filed two service agreements with Arkansas Louisiana Gas Company proposing an increase in rates and charges of approximately $347,000, or 45%, per year, based on estimated sales for 1954. The rates and charges to Arkansas Louisiana Gas Company proposed to be increased by United were contained in United's Rate Schedule FPC



No. 69, and supplements thereto, which was the subject of a proposed notice of cancellation filed by United at Docket No. G-2019 on the ground that its sale to Arkansas Louisiana Gas Company was not subject to the Commission's jurisdiction. As noted previously, the aforesaid notice of cancellation of Rate Schedule FPC No. 69 had been suspended until January 3, 1953, and until such further time as it might be made effective in the manner prescribed by the Act. At the date of the filing of the proposed increase to Arkansas Louisiana Gas Company the cancellation of Rate Schedule FPC No. 69 was under suspension. Concurrently with the filing of the proposed increase, United requested permission to withdraw its notice of cancellation of Rate Schedule FPC No. 69. The Commission, by order issued March 1, 1954, at Docket No. G-2378, pursuant to Section 4(e) of the Act, suspended the effectiveness of the proposed service agreements until

August 1, 1954, and also allowed the withdrawal of the notice of cancellation of Rate Schedule FPC No. 69. Additionaliy, the Commission consolidated the proceeding upon the rate increase at Docket No. G-2378 with the proceedings at Docket Nos. G-1142, G-1508, G-2019, G-2074, G-2210, and G-2220.

By orders issued January 14, 1953, at Docket No. G-2019 and April 1, 1953, at Docket No. G-2074, the Commission permitted, upon motions filed by United, the respective rate increases in those proceedings to become effective, under bond and subject to refund, as of January 3 and March 17, 1953, respectively. As noted previously, the reduced increase at Docket No. G-2074 became effective as of July 28, 1953, by order issued therein

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on October 22, 1953. Subsequently, by orders issued January 25, 1954, at Docket Nos. G-2210 and G-2220 and August 16, 1954, at Docket No. G-2378, the Commission permitted, upon motions filed by United, the respective rate increases in those proceedings to become effective, under an undertaking and subject to refund, as of December 25, 1953, January 1 and August 1, 1954, respectively. Thus, all the increased rates proposed by United in these various proceedings are currently contingently effective under bond or undertaking and subject to refund.

By various orders of the Commission a number of persons, mainly customers of United, have been permitted to intervene in one or more of these consolidated proceedings. They include Willmut Gas & Oil Company (Willmut), Mississippi River Fuel Corporation (Mississippi), Southern Natural Gas Company (Southern), Texas Eastern Transmission Corporation (Texas Eastern), Tennessee Gas Transmission Company (Tennessee), Texas Gas Transmission Corporation (Texas Gas), Tyler Gas Service Company (Tyler Gas), Mobile Gas Service Cor-

poration (Mobile), and Mississippi Valley Gas Company (MVG), which are customers of United. Also, Louisiana Public Service Commission and the Alabama Public Service Commission. The City of Tyler, Texas (Tyler), also filed a notice of intervention. And Memphis Light, Gas & Water Division, City of Memphis, Tennessee, (Memphis), which is a customer of Texas Gas which in turn buys gas from United, was also permitted to intervene.

As noted above the various proceedings were consolidated from time to time for purposes of hearing. Hearings were first held in March of



1953. Subsequently, other hearings were held in June and July, 1953, and in March 1954. At such hearings all parties of record, including the interveners and Staff Counsel, had full opportunity to participate and to conduct as much of their cross-examination as they were then prepared to undertake, pursuant to the procedure specified in the order issued November 26, 1952, herein.

Following the recessing of the hearings on March 25, 1954, representatives of United and of the Staff conferred from time to time during the period April through August 1954, for the purpose of checking and rectifying differences resulting from the Staff's examination of the books and records of United. When the hearings resumed on August 11, 1954, the other parties were apprised of the conferences held between representatives of United and of the Staff. Thereupon, Staff Counsel moved that the hearings be recessed in order to afford the parties to these proceedings an opportunity to confer with respect to the facts and figures developed by the Staff in its examination of the books and records of United. Conferences were held on August 11 through 13, inclusive, and on August 16, 1954. At such conferences, which were attended by all parties to the proceedings except the

Louisiana Public Service Commission and Memphis, the cost of service for the year 1952 adjusted, allocation, and resulting rates tentatively agreed upon by representatives of United and the Staff, were presented to the parties as Documents A through D, inclusive. After full discussion, the hearings, which had been recessed from day to day during the conferences, were resumed on



August 17, 1954, at which time Documents A through D, inclusive, as modified in conference, were received in evidence as Exhibit Nos. 77 through 80.

The terms of the proposed settlement have been agreed to by all parties, except Mississippi. Tyler and Tyler Gas have stated on the record their qualified acceptance of the terms of the proposed settlement subject to the outcome of litigation now pending in the United States Court of Appeals for the Fifth Circuit concerning the legality of United's filing at Docket No. G-2210 so far as it relates to sales to Tyler Gas. Mobile stated on the record its approval of the settlement terms relating to the sale of natural gas to Mobile for domestic, commercial and other uses. Mobile expressly reserved from approval United's rates to Mobile for resale for industrial use only to Ideal Cement Company. Mobile states its exception of approval of such rate on the ground that the United States Court of Appeals for the Third Circuit held, in an opinion filed September 7, 1954, that United's proposed increase of rates and charges to Mobile for resale to Ideal Cement Company should be rejected.

Pursuant to order issued August 19, 1954, oral argument was had before the Commission on September 9, 1954, in Washington, D. C., concerning the matters involved and issues presented by the proposed settlement. All parties to the proceedings participated in the oral argument save Louisiana Public Service Commission, MVG,

and Memphis. Previously, however, the latter two had signified their assent to the pro-



posed settlement. At the oral argument the parties adhered to their position as expressed upon the record prior to argument except that Mississippi River Fuel Corporation advanced a counter proposal designed to coincide with the views expressed by its president upon the record and yet grant to United substantially the same amount of dollars which it would obtain under the proposed settlement. Thus, these proceedings are before us for disposition upon the proposed settlement and consideration of the counter proposal submitted by Mississippi River Fuel Corporation which was rejected by all customers affected by it.

United is a "natural-gas company" within the meaning of the Act as heretofore found by the Commission in its order of November 10, 1942, *In the Matter of United Gas Pipe Line Company,* Docket No. G-232, 3 F.P.C. 863. It is engaged in the transportation and sale for resale of natural gas in interstate commerce. It transports by means of its integrated pipe-line system natural gas produced from fields in Texas, Louisiana, and Mississippi and delivers and sells it to industrials, other pipelines, and distribution companies in the foregoing States and also in Alabama and Florida.

On the basis of the 1952 test year, as adjusted, and the sales volumes used for such test period, the increase in rates and charges under the suspended rates to jurisdictional business amounts to $10,370,280. The rates provided in the proposed settlement produce charges of $6,171,386 less than sought by United by its various filings at Docket Nos. G-2019, G-2074, G-2210, G-2220 and G-2378.

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The basis of the settlement is reflected in Exhibits Nos. 77, 78, 79, and 80, which are of record in these proceedings. These exhibits were prepared after an extensive field examination of the books, records and operations of United by representatives of the Staff. Exhibit No. 77 (page 1) shows a total rate base investment developed by the Staff for the test year of $291,406,069 with no allowance for working capital because of available income tax accruals, and adjusted to reflect the elimination of $9,282,553 in Account 100.5, Gas Plant Acquisition Adjustments. Total rate base investment developed by the Staff is $21,361,748 less than urged by United for the test year, due primarily to differences in working capital, Account 100.5, and gross plant in service. United has agreed to a rate of return of 6%, which, when applied to the total rate base determined by the Staff, results in a return of $17,484,364. Previously, United had contended for a rate of return of 6¾% on the record, or an allowance of $21,111,828 based on its determination of total rate base investment for the test year of $312,767,817.

The Staff, as a result of its investigation of United's operations for the test period, developed a cost of service of $143,628,905.23, including return at 6%. This cost of service reflected various adjustments proposed by the Staff amounting to a net reduction of $14,013,864. Principally, the difference between the cost of service determined by United and by the Staff is accounted for by adjustments for purchased gas, depreciation, amortization of Gas Plant Acquisition Adjustment, taxes, and return, all as shown on page 2 of Exhibit No. 77.

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For the reason that not all of United's sales are subject to the Commission's jurisdiction it was necessary to

make an allocation of cost of service to determine the costs to be borne by the jurisdictional business. The United system is divided into nine operating districts, designated as the San Antonio, Houston, Beaumont, Southwest Louisiana, New Orleans, Dallas, Shreveport, Monroe, and Jackson districts, all as shown in Exhibit No. 4. The New Orleans District is divided into New Orleans #5, which United conceives to be intrastate in nature; and New Orleans #6, which is interconnected with its interstate facilities. The Jackson District includes Northwest Mississippi which is not physically interconnected by existing gas transmission pipe lines. The sales and services rendered in United's so-called Northern Area, which includes the Dallas, Shreveport, Monroe, and Jackson districts are subject to the jurisdiction of this Commission. The sales and services rendered in United's so-called Southern area, which includes the San Antonio, Houston, Beaumont, Southwest Louisiana, and New Orleans districts are not subject to the jurisdiction of this Commission.[2a]

The allocation of the total cost of service as between districts and between sales from the production and transmission systems—subdivided in turn as between direct sales and sales for resale as well as pipe line and town border sales—and gas transported for others is shown in detail on Exhibit No. 78.

It is clear from a study of the exhibit pertaining to the allocation of the cost of service that the allocation procedures recognize and



follow the principles adopted by the Commission in its Opinion No. 225, *In the Matter of Atlantic Seaboard Cor-*

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2a Except certain sales of natural gas in interstate commerce for resale which are made by United in the Beaumont District.

*portation,* Docket No. G-1175, *et al,* issued April 25, 1952, and in its Opinion No. 228, *In the Matter of Northern Natural Gas Company,* Docket Nos. G-1382, *et al,* issued June 11, 1952.

Using the standard *Atlantic Seaboard* allocation procedures, the total cost of service in United's Northern area is found to be $74,412,222, exclusive of Northwest Mississippi. As indicated by page 1 of Exhibit 78, United's total revenues in the Northern Area under the rates and charges in effect immediately prior to the proposed increased rates in these consolidated proceedings amount to $70,353,224, or $4,058,998 less than the cost of service for the Northern Area. The amount of $4,058,998 represents then the deficiency in United's rates and charges and the amount which it would require in order to recover its cost of service for the Northern Area. A breakdown of the deficiency or excess for sales for resale from the transmission and production system as between pipe line and town border sales in the two rate zones in the Northern Area—as well as the deficiency in the transportation rates prior to January 3, 1953—is shown on lines 12 through 25 and column 7 of page 1 of Exhibit No. 78 and this allocation of cost of service has been agreed upon by all parties except Mississippi.

Rates designed to recoup the cost of service detailed in Exhibit No. 78 as to each classification of service in the particular rate zones are shown in Exhibit No. 79. A comparison of the rates presently in effect, either under bond or undertaking and subject to refund, and the proposed settlement rates may be summarized as follows:

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## SALES TO PIPE-LINE COMPANIES

| | Central Zone[3] | | | | Jackson Zone | |
|---|---|---|---|---|---|---|
| | Present | | Settlement | | Present | Settlement |
| *Firm Service* | | | | | | |
| Designation | PL-3 | PL-4 | PL-2 | PL-C | PL-1 | PL-J |
| Demand Charge | $0.65 | $0.96 | $1.30 | $0.75 | $1.30 | $1.03 |
| Commodity Charge | 9.0¢ | 11.6¢ | 12.5¢ | 10¢ | 12.5¢ | 12¢ |
| *Emergency Service* | | | | | | |
| Designation | PLE | | PLE-C | | PLE | PLE-J |
| Commodity Charge | 16.77¢ | | 12.5¢ | | 16.77¢ | 15.4¢ |

## TRANSPORTATION

(All Central Rate Zone)

| | Present | | | Settlement | | |
|---|---|---|---|---|---|---|
| Designation | T-1 | T-2 | T-3 | T-1 | T-2 | T-3 |
| Demand Charge | $0.79 | $0.182 | $0.79 | $0.60 | $0.25 | $0.60 |
| Commodity Charge | 1¢ | 1¢ | 1¢ | — | — | — |

## TOWN BORDER

| | Central Zone | | | Jackson Zone | | North West Mississippi Zone | |
|---|---|---|---|---|---|---|---|
| | Present | Settlement | | Present | Settlement | Present | Settlement |
| *Small General Service* (3,000 Mcf per day or under) | | | | | | | |
| Destination | G-C | G-B | G-C | G-J | G-J | G-NW | G-NW |
| Commodity Charge | 18¢ | 17¢ | 16¢ | 24¢ | 19¢ | 42.5¢ | 41¢ |
| *Large General Service* | | | | | | | |
| Designation | DG-C | DG-B | DG-C | DG-J | DG-J | None | DG-NW |
| 1st Block[4] | 20¢ | 15¢ | 17¢ | 25¢ | 20¢ | — | 46¢ |
| 2nd Block | 12.5¢ | 10¢ | 12.5¢ | 16.5¢ | 15¢ | — | 30¢ |
| *Large Volume Industrial for Resale* | | | | | | | |
| Designation | IND-C | | IND-C | IND-J | IND-J | IND-NW | None |
| Commodity | 13¢ | | 12.5¢ | 14.5¢ | 14.5¢ | 33.5¢ | — |

[3] The Central Zone includes the Dallas, Shreveport, and Monroe districts.

[4] 1st Block rate is applicable to all gas delivered during the billing month up to that number of Mcf obtained by multiplying the billing demand for the month by 8. The second block rate is applicable to all gas delivered during the billing month in excess of the gas billed at the first block rate.

A comparison of the impact of such proposed settlement rates and the rates presently in effect, either under bond or undertaking and subject to refund, may be summarized as follows:

NORTHERN AREA

Excluding NW Mississippi

1952 Adjusted

| Customer or Class of Service | Revenues under Present Rates | Revenues under Settlement Rates | Decrease under Settlement Rates | Percent Decrease |
|---|---|---|---|---|
| PIPE-LINE COMPANIES | | | | |
| Mississippi River Fuel Corp. Central Rate Zone | $15,503,388 | $14,554,978 | $ 948,410 | 6.1% |
| Southern Natural Gas Co. | | | | |
| Central Rate Zone | 2,653,177 | 2,972,864 | 319,687(I) | |
| Jackson Rate Zone | 4,845,000 | 4,426,429 | 418,571 | |
| Total Southern | 7,498,177 | 7,399,293 | 98,884 | 1.3 |
| Texas Eastern Trans. Corp. | | | | |
| Central Rate Zone | 5,800,847 | 6,492,850 | 692,003(I) | |
| Jackson Rate Zone | 23,249,050 | 21,485,662 | 1,763,388 | |
| Total Texas Eastern | 29,049,897 | 27,978,512 | 1,071,385 | 3.7 |
| Texas Gas Trans. Corp. Central Rate Zone | 9,224,980 | 7,809,175 | 1,415,805 | 15.3 |
| Total Pipeline Companies | $61,276,442 | $57,741,958 | $3,534,484 | 5.8% |
| TRANSPORTATION Central Rate Zone | $ 2,744,836 | $ 1,510,272 | $1,234,564 | 45.0% |
| TOWN BORDER | | | | |
| Central Rate Zone | $ 3,981,685 | $ 3,588,177 | $ 393,508 | 9.9% |
| Jackson Rate Zone | 12,720,539 | 11,711,709 | 1,008,830 | 7.9 |
| Total | $16,702,224 | $15,299,886 | $1,402,338 | |
| GRAND TOTAL | $80,723,502 | $74,552,116 | $6,171,386 | 7.6% |

(I) Indicates increase.

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Exhibit No. 79 clearly shows that the proposed settlement rates will generate annual revenues to United from sales and service in the Northern Area in an amount of $74,552,116, which is an increase of $4,198,894 over the revenues which would have been generated under the rates in effect immediately prior to the effective dates of the increased rates filed in these consolidated proceedings. Such revenues, however, are $6,171,386 less yearly than the revenues which would be generated under the increased rates filed by United, and which rates its customers are presently paying subject to refund.

Exhibit No. 80 constitutes the FPC Gas Tariff which United would file to effectuate the terms of settlement. Pursuant to the terms of the settlement, United proposes to file its FPC Gas Tariff, First Revised Volume No. 1, to take effect as of August 1, 1954. Such revised volume would supersede United's present tariff and would reflect the terms of the proposed settlement. Such tariff is to be filed in the event the Commission approves the proposed settlement.

In addition, the parties supporting the proposed settlement have agreed that the refund due any customer in these consolidated proceedings will be equal to the difference between (a) the amounts actually billed by United under the applicable increased rate filed by it at Docket Nos. G-2019, G-2074, G-2210, and G-2220, which were suspended by orders of the Commission and which are currently contingently effective, and (b) the amounts which would have been collected if such customers were billed (1) under the applicable proposed settlement rate, or

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(2) under the rates superseded by the increased rate filed by United in the consolidated proceedings, if such super-

seded rate is higher than the settlement rate, for the respective periods beginning with the effective date of the increased rates. No refund would be contemplated at Docket No. G-2378 in view of the fact that such increased rate became effective on August 1, 1954, the date at which the proposed settlement rate would become effective.

In addition to the foregoing, the parties supporting the proposed settlement have agreed to the following:

(1) The rate investigation proceeding at Docket No. G-1142 will be dismissed and terminated, in the event the Commission enters an order approving the proposed settlement.

(2) The order to show cause at Docket No. G-1508 is now moot because United has filed its conversion tariff and the Commission has allowed it to become effective in part as of August 3, 1952, and in remainder part as of January 3, 1953, under bond and subject to refund. United will forthwith, upon acceptance of the proposed settlement, move to dismiss the suit filed by it on or about October 19, 1950, in the United States Court for the District of Columbia, Civil Action No. 4680-50 and styled *United Gas Pipe Line Company* v. *Federal Power Commission, et al.*

(3) United will move to withdraw certain proposed notices of cancellation with respect to certain sales which United



asserted were not subject to this Commission's jurisdiction. The proposed notices of cancellation to be withdrawn are listed in Part I of Appendix A to this order. The applicable town-border rate agreed upon by the parties will be the rate which United will charge these town-border customers on and after August 1, 1954.

(4) United will file with the Commission executed service agreements for certain town-border utility customers listed in Part II of Appendix A to this order. The town-border rate which may be applicable to these particular customers will be effective on and after August 1, 1954.

(5) Certain proposed notices of cancellation filed by United at Docket No. G-2019 shall become effective as of January 3, 1953. The proposed notices of cancellations which are to become effective are listed in Part III of Appendix A to this order.

(6) Certain reservations be made that by agreeing to the proposed settlement neither United or the Commission's staff nor any other affected party is to be considered as agreeing with the methods used for determining cost of service, or with the principles underlying the results reflected in the proposed settlement.

(7) The proposed settlement will not prejudice the rights or contentions which any of the parties are asserting or may



assert in any proceeding now pending or arising in the future before this Commission.

(8) The parties will recommend the waiver of the necessary provisions of the Commission's General Regulations under the Natural Gas Act so far as to enable the proposed tariff (as exemplified by Exhibit No. 80) to become effective as of August 1, 1954.

(9) The settlement is conditioned upon the Commission's approval of the terms and conditions stated in the record.

As noted previously, Mobile, an intervener at Docket No. G-2210, expressly reserved from the settlement its purchase of gas from United for resale for industrial use only to Ideal Cement Company. This reservation is based upon the decision of the United States Court of Appeals for the Third Circuit in *Mobile Gas Service Corporation* v. *Federal Power Commission,* F. 2d (1954).[5] The Court held that the contract entered into between Mobile and United for a stated period of years for the sale of gas by United to Mobile at a stated price for resale to the particular industrial consumer cannot be unilaterally set aside by a filing of a higher rate by United, but can be altered only if it should be first determined that the existing contract rate is unreasonable; and that the Commission erred in not rejecting United's Revised Sheets



Nos. 39 and 40 filed at Docket No. G-2210 in so far as they affected the Mobile-Ideal Cement Company contract.

Also, as noted previously, Tyler Gas and Tyler have accepted the proposed settlement with certain qualifications. These interveners at Docket No. G-2210 have stated that they do not object to the establishment of the rates proposed for sales by United in its Central Rate Zone except to the extent that their establishment is founded on the conclusion that such rates are lawful or just and reasonable for sales by United to Tyler Gas. Such interveners, proceeding on the theory that the rates provided in the existing contracts between United and Tyler Gas are binding upon United until set aside as unjust and unreasonable in a proceeding under Section 5 of the Act, instituted a suit in the District Court of the United States

[5] The decision of the Court arose from a review of an order of the Commission issued December 7, 1953, *In the Matter of Mobile Gas Service Corporation*, Docket No. G-2227.

for the Eastern District of Texas, Tyler Division, in Civil Action No. 1662, styled *Tyler Gas Service Company et al.* v. *United Gas Pipe Line Company,* to enjoin United from moving to put into effect rates filed at Docket No. G-2210 applicable to Tyler Gas. Upon dismissal of such action by the District Court, Tyler Gas and City of Tyler noted an appeal to the United States Court of Appeals for the Fifth Circuit. That appeal is now pending.

In view of the Mobile decision, we shall provide herein that the proceedings at Docket No. G-2210 remain open for the determination of what is a just and reasonable rate to be charged by United to Mobile for resale to Ideal Cement Company, following such time as the United States Court of Appeals for the Third Circuit's decision becomes final.



Similarly, in view of the appeal noted by Tyler Gas and Tyler in the United States Court of Appeals for the Fifth Circuit and the allegations in their petitions to intervene, we shall provide that the proceedings at Docket No. G-2210 also remain open for the determination of the issues raised in said petitions to intervene by Tyler Gas and Tyler. Accordingly, the suspension of the rates and charges of United to Tyler Gas shall continue subject to the undertaking and refund, but we shall stay our orders at Docket No. G-2210 to the extent that Tyler Gas is required to pay more than the proposed settlement rates applicable to it.

Willmut, also an intervener in these consolidated proceedings, accepted the proposed settlement with the reservation that it be operative and effective from and after January 1, 1954, in view of a suit it has initiated against United in the Chancery Court of Forrest County, Mississippi. However, since the lower rates provided by the

settlement are effective from August 1, 1954, and further that refunds due Willmut are to be measured from January 1, 1954, at Docket No. G-2210, there is no need to condition this order with respect to Willmut.

We have carefully reviewed the various contentions made by Mississippi and its stated reasons for refusing to accept the basis of settlement recommended by the other parties to these consolidated proceedings. Mississippi expresses regard for United because United would not, under the settlement proposal, receive the full increase in rates for which it filed. Mississippi thinks that perhaps the producers, under the



*Phillips* decision, should be paid some amount different from that now paid to them and thus the cost of gas to United would be different than that agreed to by the parties. But the cost allowed in the proposed settlement as cost of gas purchased by United represents current volumes at current prices. The cost of gas in this case cannot be determined on any other basis. Mississippi's suggestion that we institute more than six hundred rate cases to determine finally whether the rates paid by United, under more than six hundred gas purchase contracts, are fair and reasonable, is unreasonable.

Equally untenable is Mississippi's assertion that it is looking for stability in rates for the future. It seems to envisage that if the pending proceeding is delayed until gas purchase costs are determined at the conclusion of countless rate proceedings, the economic conditions at that time, whenever that is, which will have a greater degree of stability than under the proposed settlement. But there can be no such assurance in rate making.

Mississippi further says that it objects to the methods of allocation employed in determining the cost of service

upon which the proposed settlement was based. But neither Mississippi's president in voicing objection to the settlement, nor its counsel, at any time, took exception to a single figure or named so much as one isolated circumstance where basic and recognized principles of allocation had not been employed. Furthermore, no claim was made that any peculiar fact or facts warranted or required deviation from fundamental and established methods of allo-



cation pronounced by the Commission in its prior decisions and employed in these proceedings in determining the cost of service agreed upon.

But we can only find from a full consideration of the record and all that has been said on behalf of Mississippi, that it seeks only to maintain two separate rates for gas purchased from United because it now has two rates established under fortuitous past circumstances.

Counsel for Mississippi stated Mississippi's position as follows:

> "I should say in that connection that Mississippi's basic prime objection is that the two separate contracts under which Mississippi buys gas—one having been made in 1929 and amended from time to time, covering gas from the Carthage field in Texas and Northern Louisiana sources, that is a separate contract, and a new contract under which we buy gas from the Corpus Christi line starting deliveries in 1952—are by this settlement proposed to be merged and one average rate established instead of the two rates than have heretofore been in effect.
>
> "Mississippi's position has been right from the start, and still is, that we will not agree voluntarily to that rolled-in rate principle applied to these two contracts. . ." (Tr. 3101)

592)

Counsel for Mississippi stated further:

". . . this proposed settlement establishes the single rate in substitution for two separate rates under two separate contracts now in effect, and which have always been in effect since their initiation—that is, we are not suggesting anything new when we ask for a continuation of that situation. Mississippi is firmly opposed to the elimination of the separate identity of these two service agreements, and is opposed to the application of the rolled-in rate principle to these two contracts.

• • • • •

"As to the rolled-in rate principle, United has been the principal source of gas for Mississippi since the company started in 1929. Prior to 1952, all of the gas was purchased from United pursuant to this 1929 contract, and all of it came from either East Texas or Northern Louisiana fields.

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"Starting in 1952, additional gas has been purchased under a second contract made in December 1951. That is the one . . . referred to as the G-1447 facilities and the contract. That gas comes separately and entirely from the Texas Gulf Coast through a pipe line 500 miles long that is devoted to no other purpose except bringing that gas up to the Monroe field for sale to certain pipe line companies and other customers.

"Mississippi deems it essential to maintain the separate identity of these two contracts and the gas which is purchased under the two contracts.

"The 1929 contract has been amended a number of times, and in 1937 it was amended to include some Rodessa gas, Cotton Valley and other fields in North-

west Louisiana. In 1945 it was amended to provide for the construction of the Carthage-Sterlington line which brings gas from the Carthage field in East Texas to the Monroe field for delivery. That contract fixed a rate of 38 cents demand and 5 cents commodity.

"In 1949 an amendment provided for the looping of that line and increased the volume to the present contract quantity of 202,000 Mcf per day, and increased the rate then by agreement to 45 cents demand and 6½ cents commodity." (Tr. 3117, 3118, 3119).

The president of Mississippi, objecting to the proposed settlement, "as a matter of policy", stated (Tr. 3030-32):

". . . Mississippi River Fuel's position, as a matter of policy . . . is that we are opposed to this settlement, which raises the price of gas that we receive from United from their Carthage-Sterlington facilities substantially above what we are presently paying, and what they filed for.

"The reason for that opposition, as a matter of policy, is that it was the contract with Mississippi River Fuel for deliveries from Carthage that was very instrumental in causing that facility to be built, way back. At that time gas was under contract to United at four cents, from the Carthage producers, and we were to pay what is now a very low price for gas from that facility.

* * * * *

**7594**

"We feel that Mississippi River Fuel, and our customers, and the people in the areas that we served, have a *proprietary right* in the reserves, in the accounting that has been established through the utilization

of this facility for so many years in the form of depreciation.

"We feel that we and our customers, as a matter of right, have a right to the advantages that will enure from those gas contracts in the Carthage Field, and in the Sligo Field, and in other fields in North Louisiana, and East Texas.

"Those facilities, and the gas flowing through them cost a lot less than the new facilities and the new gas purchased to support the new facilities of United, which is a 30-inch line from Corpus Christi to Monroe, Louisiana.

"We also buy gas from that line, a lesser volume. We have no objection to the rate we are now paying on either of these facilities." (Emphasis added.)

The statement that the Sterlington line was built to accommodate Mississippi is not correct. The line was authorized in Docket No. G-622 (4 F.P.C. 307) for the transportation by United of 114,000 Mcf of gas per day for Tennessee and 65,000 Mcf per day to augment United's supply to others served in the Monroe Field. In fact, the 1945 contract amendment mentioned by counsel for Mississippi was contingent on the Commission's allowing the Carthage-Sterlington line to be used to supply Mississippi although the line was primarily built to transport gas for Tennessee, and incidentally other United customers in the Monroe Field, including Mississippi. This original certificate was amended by the Commission's order of November 9, 1945, in Docket No. G-622 (4 F.P.C. 1106) which granted authority to transport 172,000 Mcf per day over this Carthage-Sterlington line for United's customers served in the Monroe Field. This represents an increase for such customers from 65,000 Mcf per day. But nowhere is Mississippi accorded any preferential rights.

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Mississippi's position is based upon the premise that it has a "proprietary right" (1) in the gas reserves upon which United depends for the gas which it purchases in the Carthage Field in Texas, and (2) in the depreciation reserves reflected on the books of United as related to United's Carthage-Sterlington line; that Mississippi has a right to have the gas reserves in the Carthage Field earmarked for its use because the cost of this gas is less per Mcf than the gas supply obtained by United from other sources in the intervening years and subsequent to the construction of the Carthage-Sterlington line; that accounting-wise the cost of transporting such gas from the Carthage Field to United's Sterlington compressor station and thence to its point of delivery to Mississippi is less than gas from other sources, because substantial depreciation has accrued on such facilities so that the net investment today is less than the net investment in newer lines where the costs of original construction were higher, and lesser amounts of depreciation have been accumulated; and that consequently Mississippi is entitled to lower rates on earmarked contract volumes from the Carthage Feld.

The president of Mississippi, in stressing proprietary rights to support preferential rates for gas out of the Carthage Field, makes reference to new facilities as a 30-inch line from Corpus Christi, Texas, to Monroe, Louisiana, as being completely and physically unrelated. These facilities to which reference is made are facilities authorized by the Commission in Docket No. G-1447 (10 F.P.C. 35). There the Commission, in referring to such facilities as well as other facilities involved in

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that docket which include a major gas-transmission line from Southern Louisiana to Kosciusko, Mississippi, stated (pages 41, 42):

"The facilities proposed in Docket No. G-1447 are intended to accomplish these general objectives: (1) Provide for a more balanced withdrawal and distribution of gas supply from presently connected and from new gas fields; (2) increase the flexibility of the present system; and (3) enable United to meet the increased requirements of present customers and provide additional capacity required by the demands of new customers proposed to be served.

* * * * *

"*In addition to accomplishing these general objectives,* United proposes to make new sales of gas to Texas Eastern Transmission Corporation (Texas Eastern) and to Mississippi River Fuel Corp. (Mississippi River), as follows:

| | Peak Day (Mcf) | Annual (Mcf) |
|---|---|---|
| | (Volumes at 14.9 p.s.i.a.) | |
| Texas Eastern | 390,250 | 135,124,260 |
| Mississippi River | 150,000 | 52,448,885 |

"United's proposed project is designed for a better balancing of gas supply in relation to the concentrated markets which United now serves and intends to serve. A relation of estimated requirements by districts and points of delivery in such district to the location of United's various major sources of gas supply, indicates the need for additional facilities if the system is to be operated in the manner contemplated. The estimated peak day requirements and volumes of gas, exclusive of gas transported for and exchanged with others, which could be made available through existing and proposed facilities to meet such requirements, by districts, is shown to be as follows:

| District | Peak Day 1952-53 Requirements (Mcf) | Supply (Mcf) |
|---|---|---|
| New Orleans | 366,000 | 855,000 |
| Dallas | 397,315 | 451,000 |
| Houston | 402,700 | 632,700 |
| San Antonio | 313,100 | 541,300 |
| Shreveport | 105,600 | 351,500 |
| Southwest Louisiana | 99,400 | 313,400 |
| Jackson | 837,300 | 230,300 |
| Beaumont | 264,300 | 121,300 |
| Monroe | 802,519 | 91,700 |
| [Total] | [3,588,234] | [3,588,200] |

* * *

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"We think that this concentration of major sources of gas supply in the southern portion of the United system requires the proposed transmission facilities *in order to properly balance markets and supply in the existing system,* and for the transportation of large volumes of gas from the southern part of the system to meet the requirements of customers now served and proposed to be served in the Monroe and Jackson district." (Emphasis added.)

With respect to the rate proposed by United for the sales of the new quantities of gas to Texas Eastern and Mississippi, the Commission stated (10 F.P.C. 45-46):

"It appears from the record that United assumed a system-wide rate of return of 6 per cent and then designed a rate for deliveries to Texas Eastern and to Mississippi River which would result in the revenues required to reach the assumed over-all return. United submitted a system-wide cost of service study including a 6 per cent rate of return which shows an average cost of 13.16 cents per Mcf on the system. However, the record shows there is a wide disparity in rates

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on the system, both above and below the indicated present average cost of service, and in many instances United presently is making sales at a rate less than the average cost of purchased gas. The conclusion of the pending investigation of United's rates should eliminate undue discrimination and may result in a revision of the company's rate structure."

Thus the Commission, in authorizing the so-called G-1447 facilities, anticipated a revision of United's rate structure, which is exactly what the proposed settlement does, and to which Mississippi objects.

This Commission has never recognized a proprietary right or preferential advantage to any one by reason of the terms of a contract or otherwise, where it might be claimed that such individual should be entitled to rates reflecting costs limited to specified facilities without regard for over-all costs reflecting system operations. The Commission has made this abundantly clear in its various decisions relating to rates.

**7598**

The record in this case shows that United receives gas from more than 200 gas fields. The gas from these various fields was acquired by contract under many varying circumstances and over a period of more than 25 years. Likewise United's gas transmission lines were built at various times and at varying costs. The cost of gas under different gas purchase contracts varies materially. The cost of constructing the individual items of property likewise varies with the year of construction. Accrued depreciation with respect to different items of property varies with the type of property and the length of time the facilities have been in service. It goes without saying that it would be physically impossible to design a scheme of rates which would reflect costs related to a gas supply and facilities

for individual customers served by United with full recognition of "proprietary rights" in the gas supply and facilities by which they are served, as claimed by Mississippi in this proceeding.

All the gas received by Mississippi from United is measured through the same meter station at Mississippi's Perryville compressor station. Respecting deliveries of this character by United to Texas Gas, less than a mile from Mississippi's Perryville station, the Commission said in Opinion No. 232, issued July 25, 1952:

> ". . .The establishment of two rates for the same service to the same customer at the same point of delivery is poor rate practice, . . .
>
> "While we have stated above that the charges resulting from the application of the $1.30 demand charge and the 12½¢ commodity charge would be applicable to the additional sales herein authorized to Texas Gas, we believe



> that the rate schedule under which these charges will be developed should contain only one rate with a single demand and commodity charge for the service to be rendered to Texas Gas, including both the sales now being made under the so-called 'Outside Supply Agreement', dated April 16, 1945, and the additional sales authorized herein. Such rate should be designed to develop the same revenue as would be developed by the two rates of the proposed contract with Texas Gas on the basis of deliveries for the first year (1953) after commencement of the additional deliveries herein authorized. For 1953, total estimated revenues under United's proposed contract would be $8,522,895, made up of $6,220,335 commodity revenue and $2,302,560

demand revenue. With the 200,000 Mcf per day maximum quantity demand herein authorized as the billing demand and with estimated sales for 1953 of 53,591,000 Mcf, we find the appropriate demand charge to be 96¢ per Mcf per month and the commodity charge to be 11.6¢ per Mcf. Such a rate will produce revenues of $8,520,556, or within 1/10 of 1% of the revenues estimated by the company." (pp. 62, 63)

The settlement rates are recommended by the Commission staff after full investigation of United's books and records, accepted by United, and approved by all interveners except Mississippi. However, we will afford to Mississippi an opportunity to be fully heard on its claim that it has a right to separate rates as opposed to a rolled-in rate reflected in the settlement.

Because we find it to be fair and reasonable, we will approve the proposed settlement as to all other parties except Mississippi, as provided in the rate settlement, and require United to maintain its present schedule of rates applicable to sales to Mississippi as they now are and until further order of the Commission.

Our order will provide for prompt hearing as to Mississippi's right to separate rates as claimed, rather than a rolled-in rate for its total service.

**7600**

The Commission further *finds:*

(1) The proposed settlement of these rate proceedings on the basis heretofore described, subject to the terms and conditions hereinafter ordered, is appropriate and in the public interest in carrying out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter provided and ordered.

(2) The rates and charges as contained in United's FPC Gas Tariff, Original Volume No. 1, as amended by its filings at Docket Nos. G-2019, G-2074, G-2210, G-2220, and G-2378, heretofore described, are not just, reasonable, or lawful under the terms and provisions of the Natural Gas Act and should be disallowed and denied, as hereinafter provided and ordered, except as to the rates and charges presently effective as to Mississippi with respect to which a further hearing should be provided.

(3) Good cause exists for the Commission to waive its applicable General Rules and Regulations to the extent that United's FPC Gas Tariff, First Revised Volume No. 1, in substantially the form of Exhibit No. 80, with the exceptions heretofore noted for Mississippi, may be permitted to become effective as of August 1, 1954.

**7601**

The Commission *orders*:

(A) The increased rates and charges contained in United's FPC Gas Tariff, Original Volume No. 1, as amended by its filings at Docket Nos. G-2019, G-2074, G-2210, G-2220, and G-2378, heretofore described, be and the same are hereby disallowed and denied except insofar as such rates and charges are applicable to sales and services to Mississippi.

(B) Within 30 days after the date of issuance of this order, United shall revise its FPC Gas Tariff, Original Volume No. 1, as to all sales and services rendered by it to its utility customers, except Mississippi, by filing, in a form satisfactory to the Commission, such new schedules of rates and charges for the sale and transportation of gas in interstate commerce and containing the rates set forth here-

tofore as being agreed-upon between the parties and to be effective on and after August 1, 1954 as are necessary to effectuate the settlement and the terms and conditions of this order.

(C) The provisions of the orders of the Commission issued at Docket No. G-2019 on August 1, 1952, and January 14, 1953, relating to Rate Schedule PL-3 in so far as it is applicable to sales of natural gas to Mississippi, and orders issued at Docket No. G-2210 on July 10, 1953, and January 25, 1954, relating to Rate Schedules DG-C and G-C in so far as they are applicable to sales of natural gas to Tyler Gas shall continue in full



force and effect until further orders of the Commission, *Provided, however,* That the effect of the order issued on January 25, 1954, at Docket No. G-2210 be and it is hereby stayed to the extent that it requires Tyler Gas to pay more than 17¢ per Mcf for gas purchased under the first block of Rate Schedule DG-C and more than 12.5¢ per Mcf under the second block thereof, and more than 16¢ per Mcf for all gas purchased under Rate Schedule G-C, all as provided in the settlement, pending determination of the issues raised by Tyler Gas and Tyler in their petitions to intervene; and *Provided further,* That Tyler Gas shall not be required to pay United more than 12.5¢ per Mcf for all gas purchased under Rate Schedule IND-C.

(D) Within 30 days from the date of issuance of this order, United shall refund to its customers, except Mississippi the difference between (a) the amounts actually billed by United under the applicable proposed increased rates filed by it at Docket Nos.

G-2019, G-2074, G-2210, and G-2220, and (b) the amounts which would have been collected if such customers were billed (1) under the applicable proposed settlement rate, or (2) under the superseded rate in the various proceedings, if such superseded rate is higher than the settlement rate for the applicable period beginning with the effective date of the proposed increased rates, *i.e.*, January 3, 1953, in Docket No. G-2019,



July 28, 1953, in Docket No. G-2074, December 25, 1953, in Docket No. G-2210, and January 1, 1954 in Docket No. G-2220, all as heretofore described, together with interest at the rate of 6% per annum from the respective date of receipt of such excess amounts to the date of refund. United shall bear all costs incident to the making of such refund.

(E) Within 45 days from the date of issuance of this order, United shall report to the Commission, in writing and under oath, the details of its calculations resulting in the refund ordered pursuant to paragraph (D), together with a copy of releases from its customers with respect to such refund.

(F) The Commission reserves the right to reject all or any part of the revised tariff or tariff sheets to be filed by United to effectuate the settlement agreed upon by the parties supporting it, and in lieu thereof to prescribe by further order appropriate rates, charges, classifications, rules, regulations, and practices, consistent with the settlement agreement.

(G) In view of the claimed right by Mississippi to separate rates as opposed to the rolled-in rate reflected in the settlement, a public hearing be held on November 16, 1954, at 10:00 a.m. (EST) in a Hearing Room

of the Federal Power Commission, 441 G Street, N. W., Washington, D. C., concerning the issues raised by Mississippi respecting its right to separate rates and related issues.

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(H) Interested State commissions may participate as provided by Sections 1.8 and 1.37(f) of the Commission's Rules of Practice and Procedure [18 CFR 1.8 and 1.37(f)].

(I) The rate investigation proceeding instituted by the Commission in Docket No. G-1142, as heretofore described, be and the same is hereby dismissed and terminated in all respects except in so far as it relates to the rates and charges applicable to Mississippi, Tyler Gas, and to Mobile for resale to Ideal Cement Company for industrial use.

(J) The show-cause proceeding in Docket No. G-1508, as heretofore described, be and it is hereby dismissed and terminated on grounds of mootness, and United shall within 30 days from the issuance of this order move to dismiss the suit filed by it on or about October 19, 1950, in the United States District Court for the District of Columbia, Civil Action No. 4680-50 and styled *United Gas Pipe Line Company* v. *Federal Power Commission, et al.*, and shall within 5 days from the issuance of an order by such Court thereon report to the Commission, in writing, under oath, the Court's action in that respect.

(K) United shall, within 30 days from issuance of this order, move to withdraw the proposed notices of cancellation involving those rate schedules listed under Part I to Appendix A to this order, covering sales and services subject to the jurisdiction of the Commission, all as heretofore described in

this order and in the statement of record, and United shall charge such customers the applicable town-border rate from and after August 1, 1954.

(L) United shall, within 30 days from issuance of this order, file with the Commission executed service agreements with the customers listed in Part II to Appendix A to this order, to cover sales and services subject to the jurisdiction of the Commission, all as heretofore described in this order and in the statement of record, and United shall charge such customers the applicable town-border rate from and after August 1, 1954.

(M) Suspension of United's proposed notices of cancellation filed on July 3, 1952, as they may have been amended, and as listed in Part III to Appendix A to this order be and the same hereby is terminated; and said notices of cancellation be and the same hereby are allowed to become effective as of January 3, 1953.

(N) The rates and charges agreed upon by the parties for the sale of gas for industrial use only in the Jackson Rate Zone shall not be applicable to the sale of gas by United to Mobile for resale to Ideal Cement Company.

(O) The proceedings in Docket Nos. G-2019, G-2074, G-2210, G-2220, and G-2378 be and they are hereby terminated in all respects, except that (1) the proceedings in Docket No. G-2019 shall



remain open for the determination of whether separate rates, rather than a rolled-in rate shall be applicable to Mississippi; and (2) the proceedings

in Docket No. G-2210 shall remain open for the purpose of (a) determining what is the just and reasonable rate to be charged by United to Mobile for resale to Ideal Cement Company following such time as the decision of the United States Court of Appeals for the Third Circuit in the *Mobile* case shall become final, and (b) in view of the pending appeal of Tyler Gas and Tyler in the United States Court of Appeals for the Fifth Circuit, referred to previously, and their petitions to intervene in the proceedings in Docket No. G-2210, determining the matters involved and issues presented by the petitions to intervene of Tyler Gas and Tyler.

(P) United shall, over the signature of a responsible officer, file with the Commission, within 30 days from the date of the issuance of this order, in writing and under oath, an original and 4 conformed copies of its acceptance of the terms and conditions of this order.



(Q) This order is without prejudice to any findings or orders which have been or may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, United, or any other affected party hereto, in any proceeding now pending or hereafter instituted by or against United or any other companies or persons.

By the Commission. Commissioner Stueck concurring in the result only.

LEON M. FUQUAY,
*Secretary.*

Adopted: October 26, 1954
Issued: November 2, 1954

7632

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

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Docket Nos. G-1142, G-1508, G-2019, G-2074, G-2210, G-2220, and G-2378

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In the Matter of

UNITED GAS PIPE LINE COMPANY

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**Petition of Mississippi River Fuel Corporation for Rehearing**

COMES Now, Mississippi River Fuel Corporation (hereinafter called "Mississippi") and presents this its petition and application for rehearing of the Order of the Federal Power Commission (hereinafter called the "Commission") adopted October 26, 1954, issued November 2, 1954, in the above matters approving a proposed settlement of rate proceedings and ordering United Gas Pipe Line Company (hereinafter called "United") to revise its FPC Gas Tariff, Original Volume No. 1, except as to rates relating to Mississippi, by filing such new schedules as may be necessary to effectuate the settlement and the terms and conditions of said Order. The rehearing herein applied for is made upon each and all of the errors, objections and grounds set forth in the following Specifications of Errors. Each matter set forth therein constitutes an objection and exception to the Order of the Commission and the Commission erred in every such respect.

SPECIFICATIONS OF ERRORS

1. The Commission has found that the rates and charges, as contained in United's FPC Gas Tariff, Original Volume No. 1, as amended by its filings in Docket Nos. G-2019, G-2074, G-2210, G-2220 and G-2378, are not just, reasonable and lawful under the terms and



provisions of the Natural Gas Act and should be disallowed and denied except as to the rates and charges presently effective as to Mississippi (Finding (2); Order (A)). Having found that said proposed rates and charges are not just, reasonable or lawful, the Commission erred in not making the same finding as to the rates and charges presently effective as to Mississippi. A rate found to be not lawful as to all other purchasers under the filings in Docket No. G-2019 is also not lawful as to Mississippi. The Commission committed error in thus excluding Mississippi from said finding.

2. The Commission finds that the proposed settlement is fair and reasonable and the same is approved as to all parties except Mississippi, and that the settlement is appropriate and in the public interest in carrying out the provisions of the Natural Gas Act and should be approved and made effective notwithstanding the objection of Mississippi thereto (Opinion p. 30; Finding (1)). In making said findings, the Commission has failed to perform its statutory duty to determine the just and reasonable rates and charges thereafter to be observed, and in failing to fix such rates by order has acted in violation of the mandatory requirements of Sections 4 and 5 of the Natural Gas Act.

3. If the finding that the proposed settlement is fair and reasonable and is appropriate and in the public interest

and should be approved and made effective, as set forth in Paragraph 2 above, is to be considered as a finding that the rates proposed by said settlement are just and reasonable under the requirements of the Natural Gas Act, then the Commission committed error in requiring that United should maintain in effect the rates and charges now applicable to sales and services to Mississippi, and said Order



established undue preferences and advantages to others and subjects Mississippi to undue prejudice and disadvantage, and maintains unreasonable differences in rates and charges contrary to the requirements of Section 4 of the Natural Gas Act; and the Commission erred in ordering United to revise its FPC Gas Tariff, Original Volume No. 1, except as to Mississippi, by filing such new schedules of rates and charges as are necessary to effectuate the settlement and the terms and conditions of said Order.

4. The Commission at Page 23 of its opinion states as follows:

> "But we can only find from a full consideration of the record and all that has been said on behalf of Mississippi, that it seeks only to maintain two separate rates for gas purchased from United because it now has two rates established under fortuitous past circumstances."

On Page 30 of its opinion the Commission states:

> ". . . However, we will afford to Mississippi an opportunity to be fully heard on its claim that it has a right to separate rates as opposed to a rolled-in rate reflected in the settlement."
>
> • • • • •
>
> "Our order will provide for prompt hearing as to Mississippi's right to separate rates as claimed, rather than a rolled-in rate for its total service."

By Paragraph (G) of the Order, a public hearing has been set "concerning the issues raised by Mississippi respecting its right to separate rates and related issues." In Paragraph (O) of the Order the Commission states that ". . . . the proceedings in Docket No. G-2019 shall remain open for the determination of whether separate rates, rather than a rolled-in rate, shall be applicable to Mississippi. . . ."

In limiting the hearing to the form of the rate and to the sole question of determining whether separate rates rather than



a rolled-in rate shall be applicable to Mississippi, the Commission has denied Mississippi its right to a hearing in violation of Sections 4 and 5 of the Natural Gas Act and the Administrative Procedure Act and the Fifth Amendment to the Constitution of the United States.

The Commission has found that a deficiency in United's rates and charges in the Northern area is $4,058,998 and thus has foreclosed by its Order any inquiry into what the deficiency, if any, in United's rates and charges actually may be (Opinion p. 13). In effect, the Commission has decided that Mississippi must provide $1,349,183 of the settlement increase (Exhibit 79).

5. If the finding is that the settlement is fair and reasonable and is appropriate and in the public interest and should be approved and made effective, as set forth in Paragraph 2 above, then such finding and the Order of the Commission requiring United to file new schedules of rates and charges to effectuate such settlement, except as to Mississippi, is without support of substantial evidence in the following particulars:

(a) The exhibits referred to in the Commission Opinion, Nos, 77, 78, 79 and 80, were not sponsored by any

witness and were objected to by counsel for Mississippi (Tr. 3081; 3088).

(b) No opportunity was given for cross-examination of any of the witnesses of United and no Staff witnesses have testified as yet. The order of April 1, 1953 fixing the procedure in these proceedings is not completely stated at Page 8 of the Opinion. A reference to that order clearly shows that cross-examination is to take place only after the conclusion of United's direct case in support of all dockets. United's case has not yet been concluded.

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(c) The adoption of a rate base from Exhibit 77 is made without disclosing the reasons and basis therefor, as required by the Administrative Procedure Act.

(d) The use of a rate of return of 6% is made without any finding that it is a fair and reasonable rate for United and without any support therefor in the record; and the Opinion of the Commission does not set forth the reasons or basis in support of said 6% rate of return as is required by law (*Northern Natural Gas Company v. Federal Power Commission,* 206 F. 2d 690).

(e) The statements in the Opinion that the allocation procedures followed in this case are in accordance with the principles adopted in the Commission's Opinion No. 225, *In the Matter of Atlantic Seaboard Corporation,* Docket No. G-1175 et al. and Opinion No. 228, *In the Matter of Northern Natural Gas Company,* Docket No. G-1382, et al. are only partly correct. The classification of costs between demand and commodity components has been followed, but the results do not support the rates which are proposed by the settlement

and no finding has been made by the Commission that the proposed rates are supported by the cost allocation procedures referred to. In addition, the use of a single peak day period in allocating demand costs is contrary to the procedures heretofore used and approved by the Commission wherein a three-day continuous sustained peak period has been utilized.

(f) The Commission failed to determine to what extent the producers supplying gas to United have filed their contracts pursuant to Order No. 174-A.

(g) The Commission erred in the use of the prices charged



by Union Producing Company, an affiliate of United, for gas purchased from said affiliate, whereas the Commission should have determined the price that should be allowed in accordance with the principles established in the *Panhandle* decision (Opinion No. 269), and in refusing to determine the reasonableness of prices paid by United to said affiliate and to other producers.

(h) In approving said settlement the Commission did so on the basis of 1952 costs although 1953 data had been submitted by United to the Staff and all parties, although not introduced in the record.

(i) Upon inquiry by Commissioner Draper as follows: "Is it your position that the record in this case will support the rates which you are now willing to accept in the so-called settlement?", Staff Counsel McAllister replied: "The record will not support them" (Tr. 3165).

6. The Commission erred in many statements in the opinion relating to Mississippi's position as stated by its

President and its Counsel in these proceedings (Opinion, pp. 21-30) in the following respects:

(a) On Page 22 of the Opinion the Commission states:

". . . But neither Mississippi's president in voicing objection to the settlement, nor its counsel, at any time, took exception to a single figure or named so much as one isolated circumstance where basic and recognized principles of allocation had not been employed."

On the contrary, the use of a single peak day for allocating demand charges was wrong and objection was made to adding costs from the Southern Area to the Northern Area and in averaging all costs in the allocation procedures. Other objections were made (Tr. 3121; 3124-3125).

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(b) On Page 22 of the Opinion the Commission states:

". . . Furthermore, no claim was made that any peculiar fact or facts warranted or required deviation from fundamental and established methods of allocation pronounced by the Commission in its prior decisions and employed in these proceedings in determining the cost of service agreed upon."

The particular facts of the making of the two contracts which Mississippi had with United were stated to be the reason for not using allocation methods of averaging all costs, and for maintaining the separate identity and integrity of the two contracts (Tr. 3101; 3118-3121).

(c) On Page 23 of the Opinion the Commission states:

"But we can only find from a full consideration of the record and all that has been said on behalf of Mis-

sissippi, that it seeks only to maintain two separate rates for gas purchased from United because it now has two rates established under fortuitous past circumstances."

Mississippi has two separate contracts which were negotiated separately for separate sources of gas and the maintenance of the separate contracts are as important as the maintenance of separate rates applicable thereto. The excerpts which the Commission quotes from statements on behalf of Mississippi are selected excerpts which do not set forth in full the position stated by Mississippi. Other objections made were: The amount United is entitled to is not known (Tr. 3033); the fairness of producers' prices is not known (Tr. 3033); best procedure is to go forward and determine reasonable rates (Tr. 3035-3036); doubt that the filed PL-3 rate of 65¢ demand and 9¢ commodity can be sustained (Tr. 3121); investigation of rates charged by Union Producing Company and other producers may result in lower rates (Tr. 3124); Mississippi's customers are being asked to subsidize other customers (Tr. 3122); settlement is based on expediency and to



avoid burdensome task of rate hearing (Tr. 3118) which is substantially admitted by United (Tr. 3112) and the Staff (Tr. 3165).

7. The Commission erred in ordering the establishment of a rolled-in rate for the Northern Area, other than deliveries at Kosciusko, for the following reasons:

(a) The Commission made reference to and quoted from the opinion rendered in Docket No. G-1447 in which United obtained authority to construct the line to Kosciusko and the Corpus Christi line, apparently

as a basis for justifying a rolled-in rate for certain deliveries, although a separate rate is authorized in the settlement for the Kosciusko, line, thereby establishing separate rates for separate sources of gas delivered in the Northern Area.

The proceedings in Docket No. G-1447 justify and support a separate cost allocation for separate sources and facilities, rather than an averaging method. The settlement recognizes this by approving a separate rate for the Kosciusko deliveries, instead of a rolled-in rate for all deliveries in the Northern Area.

(b) On Page 29 of the Opinion the Commission characterizes the claim of Mississippi as involving a requirement to establish a separate rate for individual customers. Mississippi is not asking for separate rates for individual customers but merely is asking that United's Northwest Louisiana-East Texas system be treated separately from the Corpus Christi pipe line for purposes of determining the rates to be charged for gas from two separate sources.

(c) The whole basis of the rolled-in rate, as stated by the Commission, is that all the gas delivered by United to Mississippi is received at Mississippi's Perryville Compressor Station. This



principle would disregard entirely the cost involved for the different service from different sources and through different pipe line systems. The record fails to show the relative costs of rendering service from the two pipe line systems nor the separate costs of gas to supply such systems; and fails to show any equal benefits to customers of Mississippi and customers of the other pipe lines taking gas from United.

8. The Commission erred in depriving Mississippi of the rights which it has by virtue of its contract made with United in 1945 for the purpose of gas to be delivered through United's Northwest Louisiana-East Texas facilities without any hearing with respect thereto and without making any finding that the continuance of said contract and the retention of Mississippi's rights thereunder would be unlawful under the Natural Gas Act.

9. The Commission erred in ordering United to file rate schedules increasing the rate known as the PL-3 rate in Docket No. G-2019 to a rate higher than that filed by United and in so doing ordered an increase in rates contrary to the provisions of Section 5 of the Natural Gas Act.

10. Although the Commission found that the rates stated in the PL-3 rate schedule in Docket No. G-2019 were not just, reasonable or lawful under the Natural Gas Act (Finding (2); Order (A)), the Commission ordered refunds to be made to all customers except Mississippi and thus the Commission's Order permits United to retain rates collected from Mississippi found by the Commission not to be just, reasonable or lawful.

11. In page 30 of the Opinion, the Commission stated:

> "However, we will afford to Mississippi an opportunity to be fully heard on its claim that it has a right to separate rates as opposed to a rolled-in rate reflected in the settlement."



And in the Order the Commission stated at Page 34:

> "(G) In view of the claimed right by Mississippi to separate rates as opposed to the rolled-in rate reflected in the settlement, a public hearing be held on November 16, 1954, at 10:00 a.m. (EST) in a Hearing Room of the Federal Power Commission, 441 G Street, N.W., Washington, D. C., concerning the issues raised by

Mississippi respecting its right to separate rates and related issues."

By the foregoing finding and Order the Commission has purported to place the burden of proof on Mississippi, whereas under Section 5 of the Natural Gas Act the burden of proof is upon United as to the increased rate in Docket No. G-2019, and upon the Commission Staff in Docket No. G-1142.

WHEREFORE, Mississippi prays that the Commission will grant rehearing of its Order issued November 2, 1954 in the above entitled matters, and upon such rehearing will vacate and set aside said Order and proceed to a determination of just and reasonable rates to be charged by United.

Respectfully submitted,

MISSISSIPPI RIVER FUEL CORPORATION
By A. W. Manley, Secretary

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UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

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Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby and Frederick Stueck

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Docket Nos. G-1142, G-1508, G-2019, G-2074, G-2210, G-2220, and G-2378

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In the Matter of

UNITED GAS PIPE LINE COMPANY

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**Order Clarifying and Modifying Order Accompanying Opinion No. 277 Issued November 2, 1954, and Specifying Procedure**

Mississippi River Fuel Corporation (Mississippi) filed on November 23, 1954, a Petition and Application for Rehearing of our order herein accompanying Opinion No. 277.

Among other things, Mississippi's Petition states that "In limiting the hearing to the form of rate and to the sole question of determining whether separate rates rather than a rolled-in rate shall be applicable to Mississippi, the Commission has denied Mississippi its right to a hearing in violation of Section 4 and 5 of the Natural Gas Act. . ."

Our order is not to be construed as confining Mississippi to the narrow area described in its Petition.

In addition to the matter of whether a rolled-in rate should or should not be made part of United's rate structure applicable to Mississippi our order was intended to

afford Mississippi a full and complete hearing regarding all matters at issue as to which it has a material interest, and our order should be so construed.

We have also noted that Mississippi's Petition refers to page 8 of our Opinion and to our Order of April 1, 1954, concerning procedure.

In order to protect fully the rights of all parties herein and to provide for the conclusion of the hearing in these proceedings at the earliest practicable time the outline of procedure hereinafter set forth shall be followed.

The Commission *orders*:

(A) At the hearing to be reconvened on December 6, 1954, United Gas Pipe Line Company (United) shall present any additional testimony that it is prepared to offer.



(B) The testimony of such witnesses as may be offered in connection with Exhibits 77 through 80 inclusive, shall then be presented, together with such additional testimony and evidence as the staff may have to offer.

(C) Thereafter cross-examination of witnesses who have testified in support of the direct case may be undertaken by United, Mississippi, and other interveners and Staff Counsel.

(D) Following cross-examination, Mississippi and all other parties shall then present such testimony and evidence as they may have to offer, to be followed by cross examination.

By the Commission.

LEON M. FUQUAY, Secretary.

Adopted: December 1, 1954
Issued: December 2, 1954

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

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Docket Nos. G-1142, G-1508, G-2019, G-2074, G-2210, G-2220, and G-2378

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In the Matter of

UNITED GAS PIPE LINE COMPANY

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**Application to the Presiding Examiner for the Issuance of Subpoena for the Production of Documentary Evidence**

Comes now Mississippi River Fuel Corporation, by its Attorney, and applies, pursuant to the provisions of Section 1.23 of the Rules of Practice and Procedure of this Commission, to the Presiding Examiner for the issuance of a subpoena directed to United Gas Pipe Line Company for the production of documentary evidence within its possession consisting of its gas purchase contracts with Union Producing Company, particularly hereinafter described, and for the appearance before the Presiding Examiner in the hearing now being conducted of these consolidated dockets pursuant to order of the Commission dated December 2, 1954, of Charles Barnett, an official of United, or other officials of United competent and qualified to testify as a witness in said hearing, respecting the negotiations between United and Union leading to and culminating in the execution of the gas purchase contracts between said companies effective in 1950 and amendments thereto since January 1, 1951, and for grounds therefor says:

1. Applicant avers, upon information and belief, that Union Producing Company is a wholly-owned subsidiary of United Gas Pipe Line Company (United Gas Corporation); that since January 1, 1951, the prices of natural gas sold to United by its affiliate and subsidiary, Union, have been increased from time to



time to the date hereof unjustly, unreasonably and absent arm's length bargaining between the two affiliated corporations, without all of the legal elements and without legal and reliable considerations for such price increases.

2. In the hearing now in progress before the Presiding Examiner the rates proposed to be applied for sales of natural gas to the customers of United are predicated, among other factors, upon United's cost of service of $143,628,905, of which $89,218,255, or over 60%, is the cost to it of natural gas purchased. Based on United's total volume of purchases of 1,037 billion cubic feet in 1953, Union provided almost 247 billion, or nearly one-quarter of the total supply, in part under contracts in which the sales prices have been so increased. Commission's Staff has, in testimony and exhibits in the hearing, priced the cost of natural gas to United under contracts with Union at the increased prices effective July 1954.

3. It is, therefore, relevant and material in this hearing to determine whether the increases in prices effective July 1954 were just and reasonable. The Applicant expects to prove by the evidence requested that such price increases were not reasonable, just, and the result of arm's length bargaining, and that the reasonable and just prices for sales of natural gas by Union to United are less than the contract prices used in determining the cost of purchased gas used in the cost of service herein. Any reduction in

the cost of its natural gas purchases from Union must effect a reduction in its cost of service to its customers, including applicant, and a consequent reduction in its just and reasonable rates to its customers.

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4. That such evidence is relevant and material to the issues involved in this proceeding has been judicially determined in the following cases:

In *Western Distributing Company vs. Public Service Commission of Kansas, et al,* 285 U.S. 119 (1932), it was held that where a corporation selling natural gas locally increases its supply by agreement in interstate commerce from a pipeline company with which it is affiliated that the two are not at arm's length in their dealings, the reasonableness of the interstate price is subject to be inquired into when the local company seeks increase in rates. The Court said (at page 124):

> "Having in mind the affiliation of buyer and seller and the unity of control thus engendered, we think the position of the appellees is sound, and that the court below was right in holding that if appellant desired an increase of rates it was bound to offer satisfactory evidence with respect to all the costs which entered into the ascertainment of a reasonable rate. Those in control of the situation have combined the interstate carriage of the commodity with its local distribution in what is in practical effect one organization. There is an absence of arm's length bargaining between two corporate entities involved, and of all the elements which ordinarily go to fix market value. The opportunity exists for one member of the combination to charge the other an unreasonable rate for the gas furnished and thus to make such unfair charge in part the basis of the retail rate. The state authority whose powers are involved to fix a reasonable rate is certainly entitled to be informed whether advantage has been taken of the situation to put an unreasonable burden upon the distributing company. . . . Any other rule

would make possible the gravest injustice. . . . The principles applicable in a rate investigation, where similar corporate relationships existed, were recently announced in *Smith vs. Illinois Bell Telephone Co.*, 282 U.S. 133, 152-153 (1930). . ."

In *Cities Service Gas Company vs. Federal Power Commission*, 155 F. 2d 694 (8th Cir. 1946), *cert. denied* 329 U.S. 773 (1946) at 703, the Court held that:

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"The Commission was justified in ignoring the contract between the two affiliates for the purpose of determining just and reasonable rates, otherwise, a regulated gas utility would be permitted to syphon off its profits to affiliates through the guise of contracts for the performance of essential functions of the integrated business."

See also:

*Colorado Interstate Gas Co. vs. Federal Power Commission*, 142 F. 2d 943, 957 (10th Cir. 1944), *cert. denied* 324 U.S. 626 (1946).

*Natural Gas Pipeline Co. vs. Slattery*, 302 U.S. 300, 307 (1937).

*Dayton Power & Light Co. vs. Public Utilities Commission (Ohio)*, 292 U.S. 290, 308 (1934).

*United Fuel Gas Co. vs. Railroad Commission of Kentucky*, 278 U.S. 300, 320 (1929).

5. The documentary evidence herein requested to be produced at the hearing are the gas purchase contracts existing between United and Union for United's Monroe, Shreveport, Dallas, Beaumont, San Antonio, Houston and Southwest Louisiana Districts effective in 1950, and all agreements amendatory thereof from January 1, 1951, to the present.

Wherefore, the premises considered, applicant requests that the Presiding Examiner issue the subpoenas herein

requested for the production of the documentary evidence hereinbefore described and for the appearance before the Presiding Examiner in the hearing of Charles Barnett or other official of United competent and qualified to testify as a witness respecting the negotiations

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between United and Union leading to and culminating in the execution of the gas purchase contracts between said companies effective in 1950 and amendments thereto since January 1, 1951.

Respectfully submitted,

MISSISSIPPI RIVER FUEL CORPORATION
/s/ GEORGE D. HORNING, JR.
By George D. Horning, Jr.

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docketed Dec. 29, 1954

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Before Commissioners: Claude L. Draper, Acting Chairman; Nelson Lee Smith, Seaborn L. Digby and Frederick Stueck.

100-2 FORMAL

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Docket Nos. G-1142, G-1508, G-2019, G-2074, G-2210, G-2220, and G-2378

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In the Matter of

UNITED GAS PIPE LINE COMPANY

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**Order Directing Issuance of Subpoena for the Production of Documentary Evidence**

On December 13, 1954, Mississippi River Fuel Corporation (Mississippi) filed an application with the Presiding Examiner herein for the issuance of a subpena directed to United Gas Pipe Line Company (United) for the production of the gas purchase contracts existing between United and Union Producing Company (Union) for United's Monroe, Shreveport, Dallas, Beaumont, San Antonio, Houston, and Southwest Louisiana Districts effective in 1950 and all agreements amendatory thereof from January 1, 1951 to the present date, and for the appearance of Charles Barnett, an official of United, as a witness respecting the negoti-

ations between United and Union leading to the execution of such contracts and amendments thereto. Such application was referred to the Commission.

Upon consideration of such application and the record herein, the Commission finds it relevant and material to the inquiry to require the production of the gas purchase contracts and amendments thereto hereinabove described.

It is *Ordered* that:

(1) The hearing held herein be re-opened and that a further public hearing be held on January 17, 1955 at 10:00 A.M. (EST) in a hearing room of the Federal Power Commission, 441 G St., N.W., Washington, D. C.

(2) A Subpena duces tecum issue to United Gas Pipe Line Company and Charles Barnett, an official of United Gas Pipe Line Company, Shreveport, Louisiana, requiring United Gas Pipe Line Company by Charles Barnett to produce at said time and place all gas purchase contracts between United Gas Pipe Line Company and Union Producing Company for the former's Monroe, Shreveport, Dallas, Beaumont, San Antonio, Houston and South-



West Louisiana District effective in 1950 and all agreements amendatory thereof from January 1, 1951 to the date hereof.

By the Commission. Commissioner Digby dissenting.

LEON M. FUQUAY, Secretary.

Adopted: December 29, 1954
Issued: January 4, 1955

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Filed July 18, 1955

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

**Decision**

Docket Nos. G-1142, G-2019, et al.

In the Matter of

UNITED GAS PIPE LINE COMPANY

UPON AN INVESTIGATION OF RATES AND CHARGES PURSUANT TO THE PROVISIONS OF SECTION 5(a) AND A FILING FOR AN INCREASE IN RATES PURSUANT TO THE PROVISIONS OF SECTION 4 OF THE NATURAL GAS ACT

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*For the Staff of the Federal Power Commission*
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Sherman S. Poland, Esq.
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BINDER, Presiding Examiner: These proceedings involve the determination of just and reasonable rates and charges, within the meaning of the Natural Gas Act of 1938 (the Act) for the delivery and sale of natural gas for resale by United Gas Pipe Line Company (United) to Mississippi River Fuel Corporation (Mississippi).

JURISDICTION

It clearly appears from the evidence that United is a natural gas company within the purview of the Natural Gas Act and is engaged in



the interstate transportation of natural gas and the sale of natural gas for resale in interstate commerce.[1]

PROCEDURAL AND OTHER BACKGROUND FACTS[2]

On October 12, 1948 the Federal Power Commission (Commission) instituted a proceeding in Docket G-1142

[1] 3 FPC 863, 4 FPC 307, 10 FPC 35

[2] These proceedings require a consideration and determination of all matters at issue in which Mississippi has a material interest. Commission Opinion No. 277 (pp. 1-10) contains an extended description of the various proceedings which culminated in the issuance of the lat-

pursuant to Section 5(a) of the Act to determine whether United's rates and charges for transportation or sale of natural gas for resale, subject to the Commission's jurisdiction, were just and reasonable, and to establish just and reasonable rates if, after hearing, it was found that any of its rates were unjust, unreasonable, or otherwise unlawful.

Subsequent to the institution of the Commission's investigation proceeding in Docket No. G-1142, pursuant to Section 4 of the Act and Part 154 of the Commission's Rules and Regulations, as amended, United filed at various times between July 3, 1952 and January 25, 1954, a total of five



separate and successive applications for increases in its rates and charges to its jurisdictional customers.[3] The issues in all such rate increase applications (insofar as Mississippi is concerned) except the first one filed, viz., Docket No. G-2019, were disposed of in Commission Opinion No. 277, and accompanying order.

Docket No. G-2019 is a filing by United made on July 3, 1952 in which such company sought increases in its rates and charges to five pipeline companies which are natural gas companies within the meaning of the Act, viz., Mississippi, Southern Natural Gas Company (Southern), Ten-

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ter opinion and order. Such opinion and accompanying order and a Commission order issued December 2, 1954 left open for hearing and determination here the level and form of United's rates which should be made applicable to Mississippi and in addition thereto certain issues regarding changes in United's tariff provisions from those in existence prior to January 3, 1953. In view of the description of all the prior proceedings contained in Opinion No. 277, references to procedural background herein will be limited, insofar as practicable, to such matter as is necessary to an understanding of the issues left for determination.

[3] See Commission Opinion No. 277, pp. 1-10 for description of such filings.

nessee Gas Transmission Company (Tennessee), Texas Gas Transmission Corporation (Texas Gas), and Texas Eastern Transmission Corporation (Texas Eastern), of approximately $9,500,000 annually, based on estimated sales for the twelve-month period ending April 30, 1953. In Docket G-2019, United sought, among other things, to establish a higher as well as a uniform rate for all sales made to the above pipe-line companies under contracts dated prior to May 15, 1951. This Rate Schedule PL-3, increased the demand charge to Mississippi under one of its two gas purchase contracts with United from 45¢ to 65¢ per Mcf of demand, and the commodity charge from 6½¢ to 9¢ per Mcf of commodity. Pursuant to Section 4(e) of the Act, the Commission suspended the increases sought in Docket G-2019 until January 3, 1953, when, among other things, United's increased rates relating to its Rate Schedule PL-3 were permitted to become effective subject to refund.

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Rate Schedule PL-2 came into existence as a result of proceedings in Docket No. G-1447 where United sought a certificate of public convenience and necessity to enlarge its pipe-line facilities for general system purposes, including service of additional supplies of natural gas to Mississippi. Following the issuance of the Commission's opinion and order in Docket No. G-1447, United, on March 24, 1952, filed, in purported compliance therewith, FPC Rate Schedule No. 115 (in the form of a contract with Mississippi) which became effective on April 24, 1952.

On July 3, 1952, United filed a tariff which conformed to the requirements of Part 154 of the Commission's Rules and Regulations, as amended. This tariff has been referred to as the conversion tariff because it converted United's schedule of rates from contract to tariff form as required by the Commission's Rules. Among other things, such

tariff embodied the rates and charges contained in United's filing of March 24, 1952 in the form of Rate Schedule PL-2, which provided for an initial rate consisting of $1.30 per Mcf per month of demand and a 12½¢ per Mcf commodity charge.

When the facilities authorized by the certificate issued by the Commission in Docket No. G-1447 became operative, Mississippi received natural gas from the earlier facilities of United and from the newer facilities authorized in Docket No. G-1447 at the same delivery point, but paid for such gas under two rate schedules although such gas was commingled prior to delivery to Mississippi. As we have noted, the PL-2 rate schedule provided for substantially higher rates and charges than did the PL-3 rate schedule.

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Between March 3, 1953 and August 17, 1954, hearings were held from time to time relating to Docket G-1142, G-2019 and the other rate increase filings made by United. On August 17, 1954 all parties agreed to a disposition of the matters at issue without further hearing except Mississippi. Included among such parties were the other pipeline customers of United, i.e., Southern, Texas Eastern, Texas Gas, and Tennessee, all of whom agreed that the proposed settlement rates and charges were just and reasonable. Mississippi alone disagreed as to the justness and reasonableness of the proposed rates and charges, and made a counter-proposal which was opposed by all customers affected by it and by the Staff of the Commission.

The Commission approved the settlement proposed as fair and reasonable, and such settlement was implemented by the filing of an appropriate tariff which was made applicable to all customers except Mississippi. The proposal was not made applicable to Mississippi because the latter objected to it and was therefore entitled to a determination

made after full hearing under Sections 4 and 5 of the Act.

The Commission rejected Mississippi's counter proposal and issued its order directing that a further hearing be held so that Mississippi could be afforded a full hearing with regard to all matters at issue as to which Mississippi had a material interest.

In connection with such further hearings, it will be noted that under Section 4(e) of the Act, United had the burden of establishing that the increased rates were just and reasonable. It will also be observed,



however, that the Commission's order in Docket G-1142 imposed certain duties upon the Staff, namely, to establish by evidence, at a hearing, the existence of any unjust, unreasonable or discriminatory rates in United's system for the purpose of effectuating the removal of such rates, if any such rates were found to exist, and to enable the Commission to establish just, reasonable and non-discriminatory rates for United. The duty of the Staff with regard to the presentation of proof in such connection was applicable not only to the level of United's Rate Schedules PL-2 and PL-3, but to the removal of any forms or combinations of forms of rates which were unjust, unreasonable or unduly discriminatory.[4]

The Commission's order issued December 2, 1954, sets forth the order in which proof was to be presented. In substance, the Commission's procedural directions required

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[4] Mississippi's brief (page 1) appears to imply that the Staff had no obligation in relation to United's Rate Schedule PL-3 or to its employment simultaneously with Rate Schedule PL-2 in the rendition of service to Mississippi. To the extent that any such implication is intended, it is incorrect. The Commission has pointed out that Sections 4 and 5 of the Act are interdependent, and has emphasized the relationship between Sections 4 and 5 in their impact upon discriminatory rates and charges. (Cf. Commission Opinion No. 281, *In the Matter of Northern Natural Gas Company*, Docket No. G-2217, pp. 13, 14)

United to present initially such additional evidence as it was prepared to offer. The order then required the presentation of the "testimony of such witnesses as may be offered in connection with Exhibits 77 through 80", together with such additional testimony as the Staff may have to offer. Since Exhibits Nos. 77 through 80 were exhibits prepared by members of the Staff of the Commission, these directions necessitated the testimony of Staff witnesses. The order furthe. provided for the opportunity of cross-examination of witnesses and for the opportunity for the presentation of evidence



by Mississippi and all other parties.

Exhibits 77 through 80 are central to the agreement reached by the various parties (except Mississippi) disposing of this matter without further proceedings. (See Commission Opinion No. 277, page 11, et seq.). These exhibits, in general, may be said to be exempletive of the Staff's position regarding just and reasonable rates both from the standpoint of level as well as form for United.[5]

At the further hearings held herein, the initial presentation was made by Staff witnesses who sponsored the aforesaid exhibits in the course of their testimony. In principal part, Exhibits 77 through 80 are documents showing (1) United's rate base, and annual return of six percent, (2) cost of service and allocation thereof, (3) the rates of United which were currently in effect compared with rates contended by the Staff to be just and reasonable, and (4)

[5] Exhibit 81 is an exhibit relating to rate of return. United adopted the testimony of Staff witnesses, but did not adopt the testimony of the Staff witness relating to rate of return or Exhibit 81. However, United did not offer rebuttal to such witness' testimony or cross-examine him. The rates put into effect pursuant to the agreement with United and the other parties were based on a 6% annual rate of return, a rate which the Staff witness supported in his testimony.

a proposed FPC Gas Tariff for United. The purpose of the latter, of course, was to implement the agreement reached.[6]

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UNITED'S AFFILIATIONS, SIZE, GROWTH AND OPERATIONS

Clear understanding of what the issues are, how they arose, and how they should be resolved will be aided by a brief explanatory statement concerning United's system, including its affiliations, size, recent history, growth, and operations. The relative position of Mississippi in the picture of United's rate structure, as a whole, may thus be seen in correct perspective.

United Gas Corporation (United Gas) has owned all the stock of United and of Union Producing Company (Union) since 1937. Union is a producing and exploration company. United is a pipe-line company, very largely engaged in transmission activities. United Gas, in addition to holding the securities of United and Union and other companies, is engaged in the local gas distribution business. The principal officers and directors of United Gas are the principal officers and directors of United and Union. United Gas is the parent of United and Union, and controls both companies.

United is one of the largest pipe-line companies in the world, serving large markets in Texas, Louisiana, Mississippi, Alabama, and Florida. It also supplies part of the requirements of transmission lines serving the Appalachain area, the Atlantic seaboard, and portions of the Mid-continent area. It owns and operates approximately 1,200 miles of field lines and approximately 8,000 miles of main

[6] Such proposed tariff has since been filed by United but was not made applicable to Mississippi since the latter had not agreed to accept the rates contained therein as just and reasonable. The rates contained in such tariff were made effective, except as to Mississippi, as of August 1, 1954.

transmission lines. United purchases, transmits, and sells natural gas at city borders, to other pipe-line companies, to gas distributing utilities, to large industrial companies for their own consumption, and in



addition, has some plants for the separation of gasoline and liquid hydrocarbons from the gas in the line. United purchases natural gas from more than 200 gas fields and from hundreds of gas producers in Texas, Louisiana, and Mississippi who are unaffiliated with it. In addition, United purchases substantial quantities of natural gas from Union, an affiliate.[7] It contracts (both with unaffiliated producers and with Union) for gas purchases which cover various periods of time and various prices.

In recent years and particularly since the advent of long distance transmission pipe lines, competition in the purchase of gas has increased very substantially. During these years, United has experienced increasing competition in negotiating contracts for the purchase of gas from producers because of the increase in the number and size of new pipe-line companies which are also seeking to augment their supplies. In addition, the tremendous increase in the demand for natural gas has been a major factor in the increase in price. These and other factors have impelled United to pay higher prices to obtain new contracts than such company paid previously and also to pay higher prices in connection with the extension of old contracts. The result has been a continuing increase in the price of gas to United during the years this matter has been under consideration. The volume of United's gas purchases for the year 1952 as adjusted for known changes runs well over a trillion cubic feet.

[7] See 10 FPC 35, referring to United Gas Corporation as the parent of United Gas Pipe Line Company, and Union Producing Company as an affiliate of United Gas Pipe Line Company.

There is nothing to indicate any diminution in the demand for natural gas in the United States, nor is there any evidence in this record to indicate that gas prices will be lower in the immediate future. Because of the increasing demand for natural gas and despite the rise in the price of gas in recent years,[8] United has engaged and is continuing to engage in the expansion of its system, and in the pursuit of relationships with gas producers which it considered would assist it to maintain and improve the sources from which it could obtain its gas requirements.

A large expansion occurred following the grant of a certificate of public convenience and necessity to United in Docket No. G-1447.[9]

Since the effects of the expansion of United's facilities authorized in Docket No. G-1447 are important to the rate-making problems dealt with herein, it appears advisable to make somewhat extended reference to the Commission's decision in that docket as it related to four matters: (1) What the expansion was, (2) the purposes for which the Commission authorized such expansion, (3) the rates made applicable to Mississippi in such decision, and (4) the dynamic character of United's history, growth operations and development of its gas reserves.

Specifically, the Commission described the proposal made by United in Docket No. G-1447 at page 37 of its opinion as follows:



> "• • • the construction of approximately 1,005 miles of gas transmission pipe lines and appurtenant facilities consisting of two major pipe lines, one in the eastern and one in the western portion of its system. The

[8] See Exh. 161

[9] See United Gas Pipe Line Company, 10 FPC 35

west line would consist of approximately 510 miles of 30-inch, 26-inch, and 24-inch diameter pipe, extending from the Aqua Dulce Field in southern Texas northeasterly to the vicinity of Perryville, Louisiana. Compression facilities aggregating 42,200 horsepower are proposed to be installed on this line. The east line would consist of approximately 305 miles of 30-inch, 26-inch, 24-inch, and 20-inch diameter pipe, extending from Pure Oil Company's offshore acreage * * * in the Eugene Island area of the Gulf of Mexico, in a northeasterly direction to a point near Kosciusko, Mississippi, with 20,800 horsepower compression. Three supply and delivery lines, consisting of approximately 179 miles of various diameter pipe would extend from southern and southeastern Louisiana and Mississippi gas fields to various points of connection with the east line.

"The proposed construction is designed to increase United's system capacity by 920,000 Mcf per day, to an estimated total of 3,805,200 Mcf per day inclusive of gas transported for and exchanged with others * * *"

(2) Purpose of the Expansion:

In connection with the purposes for which the facilities described above were to be constructed, the Commission stated at page 41:

"The facilities proposed in Docket No. G-1447 are intended to accomplish these general objectives: (1) Provide for a more balanced withdrawal and distribution of gas supply from presently-connected and from new gas fields; (2) increase the flexibility of the present system; and (3) enable United to meet the increased requirements of present customers and provide additional capacity required by the demands of new customers proposed to be served. It is estimated that with the proposed additional capacity, United would be able to provide for existing and future peak requirements in 1952-53, with the exception of the Wichita Falls District in which it is estimated that a deficiency of 27,400 Mcf will occur on the peak day in 1952-

53. It is not now proposed that the Wichita Falls District will be connected with the rest of the system.[10]



"In addition to accomplishing these general objectives, United proposes to make new sales of gas to Texas Eastern Transmission Corp. (Texas Eastern) and to Mississippi River Fuel Corp. (Mississippi River) * * *

"United's proposed project is designed for a better balancing of gas supply in relation to the concentrated markets which United now serves and intends to serve. A relation of estimated requirements by districts and points of delivery in such districts to the location of United's various major sources of gas supply, indicates the need for additional facilities if the system is to be operated in the manner contemplated. The estimated peak-day requirements in volumes of gas, exclusive of gas transported for and exchanged with others, which could be made available through existing and proposed facilities to meet such requirements, by districts, is shown to be as follows:"

(A table is then shown setting forth the requirements of all districts of United except Wichita Falls.)

The opinion continues:

"* * * We think that this concentration of major sources of gas supply in the southern portion of United's system requires the proposed transmission facilities in order to properly balance markets and supply in the existing system, and for the transportation of large volumes of gas from the southern part of the system to meet the requirements of customers now served and proposed to be served in the Monroe and Jackson districts.

"The system flexibility which United contends would result from construction of the proposed facilities relates to the ability to shift available supplies of gas

[10] United has disposed of its Wichita Falls property since the issuance of the Commission's Opinion referred to above in Docket No. G-1447.

over the system, rather than the over-all operational flexibility which results from interconnections between existing and new facilities. United concedes that prudent engineering and operating practice would suggest the advisability of establishing interconnections in certain locations between the existing and proposed facilities, but it has not proposed to do so. We think that in order to assure more flexibility in operation and better service on the system, interconnections for emergency use should be made between existing and proposed new facilities* * *

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"We are of the opinion, and find, that the facilities proposed are reasonably adequate and necessary for the service proposed to be rendered thereby.* * *

"Mississippi River, whom United proposes to serve with additional volumes of gas through the proposed facilities, presented evidence tending to show that the annual requirements of that company as presented by United are slightly high. This evidence shows that although Mississippi River presented evidence in the hearings upon its application in Docket No. G-1281 to the effect that it would purchase approximately 100,000 Mcf per day from United on a 72% load factor, the requirements of its customer companies have increased at a greater rate than had been previously anticipated. However, the evidence in this record shows that Mississippi River doubts that its requirements will equal 150,000 Mcf per day on a 95% load factor, as shown by United, because it presently is investigating the possibilities of underground storage and of obtaining gas either from new sources or from renewal of other supply contracts." [11]

(3) The Rates Made Applicable to Mississippi:

The conclusion that the Commission in effect fixed the rates set in G-1447 at rates which were to be reconsidered

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[11] Since the issuance of the Commission's decision in Docket No. G-1447, Mississippi has contracted for 150,000 Mcf per day.

upon the conclusion of the over-all investigation of United's rates which was taking place in Docket G-1142 is made clear by the following language at page 45 of the Commission's opinion:

> "There is now pending at Docket No. G-1442 (sic) an investigation into the rates charged by United, and we therefore think it proper at this time to consider only the rates proposed to be charged for the new sales to Texas Eastern and Mississippi River. It is expected that the Commission's rate investigation will be concluded before the facilities herein authorized for the sale to Texas Eastern and Mississippi River are completed and that we will have considered on that record not only United's rates for existing sales but also the rates for the two new ones. • • •
>
> "It appears from the record that United assumed a systemwide rate of return of 6 per cent and then designed a rate for the deliveries to Texas Eastern and to Mississippi River which would result in the revenues required to reach the assumed over-all return. United submitted a systemwide cost of service study including a 6 per cent rate of return which shows an average cost of 13.16 cents per Mcf on the

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> system. However, the record shows there is a wide disparity in rates on the system, both above and below the indicted present average cost of service, and in many instances United presently is making sales at a rate less than the average cost of purchased gas. *The conclusion of the pending investigation of United's rates should eliminate undue discrimination and may result in a revision of the company's rate structure.*" (Emphasis supplied)

These quotations from the Commission's Opinion make it very clear that the construction sought to be made by United and authorized in Docket No. G-1447 by the Commission was for general system purposes, and that the

Commission intended to review the rates fixed in such docket for the sale of gas to Mississippi and other companies upon the conclusion of the Commission's investigation pending at Docket No. G-1142. (See 10 FPC at pages 45 and 46). Indeed, the language employed by the Commission gave direct notice that the rates which were being made applicable to Mississippi in Docket No. G-1447, i.e., the PL-2 rates, were rates to be reconsidered in the investigation in Docket No. G-1142, particularly in the light of United's rate structure as a whole, and that the conclusions reached as a result of such investigation might "result in a revision of the company's rate structure."

(4) The Dynamic Character of United's Growth and Operations:

The Commission referred to the dynamic character of United's history, growth, and operations, and discussed its gas reserves in its opinion in Docket No. G-1447 (p. 48) in the following language:

> "The record shows the operating history of United for the past 20 years with respect to its gas purchase contracts with companies other than its affiliate, Union Producing Company. On January 1, 1930, United had 145 gas purchase contracts with non-affiliated producers, as compared with 402 such contracts as of November 1, 1950. On January 1, 1930, United was receiving gas from 27 fields under such contracts as compared with 207 fields on July 1, 1950, and



> during the intervening period deliveries were commenced under 756 contracts and deliveries ceased under 456 contracts. Cessation of deliveries for most of the contracts terminated was a result of the depletion of the supply.
>
> "During the period of 1945 through the first 10 months of 1950, in which there has been extensive growth in interstate gas transmission lines with a cor-

responding increase in competition for natural gas reserves, United entered into 343 new gas purchase contracts, which is almost three times as many contracts as were entered into during the six-year period of 1939 to 1944. In the period from 1945 to November 1, 1950, United extended the term of 178 of its gas purchase contracts as compared with 54 contracts which were extended during the 15 years prior to that time. The 178 extensions of contracts were for the most part for periods of 10 years. Between November 1 and December 31, 1950, United entered into eight new gas purchase contracts for substantial reserves, and extended the term of 15 gas purchase contracts.

"On the basis of the record, United has increased its recoverable reserves from an estimated total of 2.3 trillion cubic feet in 1930 to over 20 trillion cubic feet as estimated by Ralph E. Davis, or 16.4 trillion cubic feet as estimated by the Staff, as of July 1, 1950, although the company sold almost 6 trillion cubic feet of gas between 1930 and 1949.

"The record also shows that United has never had to cancel a sales contract because of inability to renew a gas purchase contract."

In connection with the dynamic character of United's growth, it may be observed that since the proceeding in Docket No. G-1447 was concluded the records of the Commission show that it has issued 19 certificate orders authorizing increases in United's facilities ranging from comparatively small amounts to over 5¾ million dollars and totalling in excess of 18½ million dollars.[12]

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United's history makes it clear that the selection of a test period cannot be predicated upon the assumption that any period selected will reasonably reflect what United's

[12] See Docket Nos. G-1465, G-1491, G-1571, G-1628, G-1826, G-1843, G-1879, G-1880, G-1904, G-1951, G-2064, G-2158, G-2258, G-2259, G-2416, G-2885, G-2886, G-4279, G-6885.

experience for the future will be unless adjustments to past experience are made. No matter what period is determined to be appropriate, "normalization", or the making of adjustments for known changes, would be an absolute requisite in order to arrive at a reasonable judgment regarding rates for United.

The principal issues for determination here are as follows:

(1) Is calendar year 1952, adjusted for known causes, a reasonable, proper, and lawful test period.

(2) How much is United entitled to recover in its cost of service for cost of gas purchased for calendar year 1952, adjusted.

(3) What are just, reasonable and lawful rates for United's service to Mississippi.

(4) In the case of an integrated and interconnected pipeline system such as United, should cost be based on allocations of specific facilities and sources for particular customers or should there be adherence to the principles of cost allocation heretofore followed by the Commission.

(5) Should two separate rates or a single rolled-in rate be established for service to Mississippi.

(6) Did United have the right to omit from its conversion tariff a provision in a 1945 contract with Mississippi requiring United to supply Mississippi with such additional quantities of gas as Mississippi might nominate at any time to May 1, 1961 as necessary to meet its requirements.

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(7) Should a minimum 72% take-or-pay-for provision be included in a single rate schedule applicable to Mississippi?

Other issues have arisen which are ancillary or related to those enumerated above and they will be discussed herein.

THE CONTENTIONS MADE BY THE PARTIES REGARDING "TEST PERIOD" AND THEIR RESOLUTION

Upon the resumption of the hearings following the issuance of Commission Opinion No. 277, the Staff, among other things, presented proof regarding United's rate base, return, and cost of service, using the calendar year 1952, adjusted for known changes, as the proper test period. Mississippi challenged the use of calendar year 1952, as adjusted, claiming that the use of such period was improper and unlawful.

The Staff's contentions regarding the propriety of using calendar year 1952, as adjusted for test period purposes, may be summarized as follows:

(a) The rate schedules and the data filed in support thereof by United on June 24, 1953 in connection with the rate increase sought in Docket No. G-2210 are the latest full and complete statements for United's system, as a whole, which have been filed with the Commission. Such data are based upon calendar year 1952, as adjusted for known changes, and conform to the informational standards promulgated by the Commission in Order No. 165 (effective July 1, 1953) amending Section 154.63(b)(3) of its General Rules and Regulations prescribing requirements to govern the filing of rate increases under the provisions of



Section 4 (d) of the Act. Section 154.63 (b)(3)(i) requires that financial data submitted in connection with an increased rate filing "shall be based upon a test period consisting of 12 consecutive months of most

recently available actual experience, adjusted for changes in * * * costs which are known * * * and which will become effective within seven months of the last month of available actual experience."

(b) The revenues and the costs shown by the record for the test period employed by the Staff, i.e., 1952 adjusted, are representative of the relationship that will exist between those items in the immediate future.

(c) The increase in United's PL-3 rate schedule was permitted to become effective under bond on January 3, 1953. Consequently, the year 1952 represents the 12-month period immediately preceding the earliest date upon which a decision here may be made effective as to such rates.

(d) The data covering calendar year 1952, as adjusted, are the ultimate product of an extensive investigation into an extremely large and complex pipe-line system involving the examination of hundreds of contracts, a tremendous number of figures, books, ledgers, engineering data, etc. Of necessity such investigation took a long period of time to complete. The figures arrived at as a result of such investigation are as dependable and reliable as can be obtained in a rate proceeding involving as dynamic a



company as is United in an industry setting as kaleidoscopic as the natural gas industry has been in recent years. Moreover, insofar as United's costs for purchased gas are concerned, the facts are that the prices it paid for such gas were determined on the basis of known figures as at December 31, 1953, and such figures were applied to normalized volumes for the calendar year 1952. Accordingly, insofar as the data covering

cost of gas purchased is concerned, the record reflects the results of actual 1953 experience applied to the test period. As Mississippi has pointed out, the cost of purchased gas is, dollar-wise, the most important item in the cost of service figures.

(e) No authentic figures for United's 1953 operations containing adjustments for known causes of a character which would correctly reflect an appropriate basis for rate-making purposes was presented.

(f) To attempt a further investigation to cover calendar 1953 and to check figures in United's books for such period and make proper adjustments for known causes is a long and expensive task, which of necessity would involve the taking of a substantial additional period of time. At the conclusion of such investigation, the same contention as is made here could be made again—namely, the figures are not sufficiently recent. If this contention were accepted, there would never be an end to these proceedings which are already too attenuated.

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Mississippi's contentions regarding use of calendar year 1952 as the test period may be summarized as follows:

(a) The data relied upon by the Staff to support rates for United are not supported by any United witness.

(b) The use of calendar year 1952 requires the making of major adjustments because of the completion of large additions to United's plant facilities during the period, and, accordingly, the use of this period is inappropriate and unlawful.

(c) Pursuant to an order of the Commission issued on or about April 1, 1954, United filed with the Com-

mission, or made available to the Commission's Staff and to parties to the proceeding, on or about April 30, 1954, "data showing the actual results of United's la' st 1953 operations as adjusted to reflect changes during the year." The latter data should have been employed as the basis for determining rates for United, and the employment for rate-making purposes of any other data is improper and unlawful.

(d) Actual 1953 data (which Mississippi sought to introduce as an exhibit by reference to the files of the Commission or as a numbered exhibit) show that "United's estimated purchased gas costs for 1952 adjusted • • • exceeded the actual purchased gas costs in 1953 • • •" by $4,800,000.

(e) The use of calendar year 1952, as adjusted for known changes, constitutes an improper and unlawful test period for determining United's rates.

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In general, it may be said that the most important reason why it is necessary to arrive at a proper conclusion regarding cost of service is that the amount of such cost is the amount which the Commission normally allows a natural-gas company, subject to the Act, to recover in the form of revenues. Accordingly, it is important that the test period employed for establishing cost of service be one which is as representative of an applicant's future cost of services as the circumstances will reasonably permit.

As the above summary indicates, Mississippi's contention regarding the impropriety of using calendar year 1952, adjusted for known causes, as the test period is integrated with its other contention, namely, that proper adjustments have not and cannot be made to the aforesaid test period because the adjustments made to rate base and cost-of-service figures for 1952 could not be

considered of a sufficiently adequate character to bring the evidence relating to test period up to a point where it was properly representative of the future for rate-making purposes.

Mississippi casts reflections upon the test period employed by the Staff by presenting arguments relating to the propriety of the adjustments made for such period. Accordingly, it becomes necessary in considering the propriety of the test period employed to discuss Mississippi's contentions concerning the adjustments made by the Staff.

Parenthetically, it may be observed that if one were engaged in rate making for a static company in a static industry, any year might be considered



representative. Such a situation, however, has not obtained in the natural gas industry in recent years; and in particular such a situation has not obtained in regard to United and its operations. In fact, it has been brought out that no recent year of United has been like any prior year. Thus, it appears that what is under consideration here is the determination of future rates for a very large, dynamic and expanding company in an industry distinguished by kaleidoscopic growth. United, as we have pointed out before, like many other pipe-line companies, has, in recent years, undergone a very large expansion. The fact that United's growth and continuing expansion has had the effect of making rate-making difficult does not deprive such company of its right to obtain increases in its rates, if such increases are just and reasonble.

In the course of the several years during which this matter has been under consideration, testimony has been given from time to time with regard to various test periods. When the matter was set down for hearing after the issuance of Commission Opinion No. 277 and accompanying order and the Commission's Order of December 2, 1954,

Staff witnesses used calendar year 1952, adjusted for known changes, as the test period for the purpose of determining a cost of service upon which rates for United for the future could be based.

Mississippi claims that the data relied upon by the Staff to support the proposed rates were not supported by any United witness. The short answer to this contention is that United adopted the testimony of Staff witnessses and the exhibits sponsored by them. Accordingly, the data



relied upon was supported by United. There would be no point to having any of United's employees take the witness stand to reiterate the testimony of Staff witnesses. Moreover, as Staff witnesses have testified, a substantial part of these data were obtained from the books and records of United after lengthy and intensive investigation by the Staff, and the Staff's testimony, insofar as the facts are concerned, has not been contradicted by any United, Mississippi, or other witness.[13]

Mississippi argues that the use of calendar year 1952 requires the making of major adjustments because of the completion and operation of large additions to United's plant facilities. In this connection, Mississippi refers to "the completion of United's $225,000,000 expansion program late in 1952 * * *".

Although Mississippi referred a number of times in its brief to a United $225,000,000 program, the fact is that United Gas Pipe Line Company did not have a $225,000,000 expansion program. This statement regarding the size of United's expansion program is probably extracted from the testimony of United's Treasurer, who was discussing at one point in the record the expansion program of

[13] This is not to say that Mississippi has not challenged the conclusions to be drawn from the facts.

United's parent, United Gas Corporation and its subsidiaries. United's expansion program in Docket No. G-1447 was, dollarwise, approximately half of that referred to by Mississippi.

Mississippi's brief, in discussing the adjustments made by the Staff, refers initially to the "magnitude" of the adjustments to United's rate base. These adjustments were very large, but it may be pointed out that such adjustments were based upon known facts and not upon estimates or guesses. At the



time that the staff presented its evidence regarding rate base, the so-called G-1447 facilities, which formed the major part of the increase in United's plant, had been completed and the facts with regard to the investment in such facilities were known. It appears from the evidence that every major adjustment made relating to rate base was supported by known facts.

There is no reason to assume that if 1953 figures had been employed that there would have been any material change in the rate base reached as the result of making adjustments brought about by the increase in plant facilities.

It is interesting to note that in the figures presented by Mississippi in its brief in connection with the "magnitude" of the adjustments, that the adjusted total rate base found by the Staff is almost identical with the net plant investment at December 31, 1952—which makes clear that substantially what was involved, regardless of the large amount under consideration, was simply making an adjustment to plant base to put the additional facilities in as if they were in operation for a full year. This was not a complex or difficult calculation, nor unusual in any situation where there has been an enlargement of plant facilities during a test period.

The important factor was not whether the adjustments were large, but whether the adjustments to rate base figures were supported by substantial evidence. The Presiding Examiner finds that they were so supported, and that the employment of calendar year 1952 with the adjustments as made by the Staff for known causes presented an appropriate period for rate-making purposes for United, insofar as rate base determination was concerned.

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We turn now to a consideration of Mississippi's major contentions concerning the use of calendar year 1952, as adjusted, for purposes of ascertaining United's cost of service. The largest element in United's cost of service is the cost of purchased gas, and as we have noted, Mississippi integrates its attack upon the selection of test year with an attack upon adjustments made in regard to cost of gas purchased.

The Staff ascertained, as a result of its investigation, the prices which United was paying for gas at December 31, 1953, and used the unit prices at such date as one of the principal bases in determining the cost of purchased gas for the test period. As Mississippi pointed out in its brief:

> "Actually most of the Staff's purchased gas costs were based on the results of 1953 operations. (Exh. Nos. 83, 84, 84-A, 84-B, 85, 85-A, 85-B, 86, 86-A, 87, 88)." [14]

The price of purchased gas to United as determined by the Staff at December 31, 1953 was 8.50¢ per Mcf. The cost to United for gas purchased from non-affiliated producers determined by prices as of December 31, 1953 was not contradicted, except for Mississippi's contentions con-

[14] Mississippi Brief, page 12

cerning the possible applicability of Order No. 174-A. The fact that the actual cost of gas for 1952 or 1953 was less than gas priced as of December 31, 1953 cannot be considered a contradiction. It appears that the adjustment for purchased gas, at least, insofar as the price of gas per Mcf was concerned, was not based upon guess, but upon knowledge of the facts regarding United's actual 1953



operations, and this knowledge was applied to the test period.[15]

Mississippi contends that the "• • • use of such 1952 adjusted figures required major adjustments—such as an assumed nearly 40% increase in the cost of purchased gas." In this connection, Mississippi points out that "The Staff's $89,218,255 for the cost of purchased gas for the year 1952, adjusted (Exh. 77-B), is 38% above the actual purchases of $64,873,699 for that year (Item E, Schedule F, Page 1)." The fact of the matter is that Item U (United Gas' FPC Form No. 2, Annual Report to the FPC for 1953, shows that the volume of gas atcually purchased by United in 1953 was 1,037,995 MMcf costing $84,415,828.00 and the adjustment for test period purposes was made at 1,050,000 MMcf. Having in mind that the purchased gas costs were based by the Staff on the known prices paid per Mcf for gas at December 31, 1953, and the known facts regarding the quantity of gas purchased for calendar year 1953, the figures as to cost of gas purchased, as adjusted by the Staff for test period purposes, appear exceedingly accurate.

To support its contention, that the test period employed by the Staff and adopted by United was improper and unlawful, Mississippi presented figures in its brief purporting to show the difference both volumetrically and dollar-

[15] See further discussion regarding cost of purchased gas hereinafter.

wise between sales made by United during 1953, computed at the rates established in United's filing of July 2, 1953, and sales for 1952, as adjusted by the Staff.[16] The difference between the adjusted sales and



actual sales runs from a 6% difference for Texas Eastern to a 37% difference for Texas Gas, and averages 14% with the adjusted sales being the higher figure. The difference between actual and adjusted sales for Mississippi is 14%.

Mississippi's comparison taken as a whole appears to be unsound because the comparison assumes that all pipe lines were connected during the entire period selected for comparison when such was not the fact. No adjustment is made to account for the fact that one of the pipe-line customers, viz., Southern Natural did not take deliveries from the enlarged facilities of United until April 1, 1953, and another pipe-line customer, viz., Texas Gas, did not take deliveries until August 1, 1953. Taking actual 1953 figures as a basis without proper adjustment for known causes would be incorrect because actual 1953 without such proper adjustments would not be representative of the future for United.

The use of these unadjusted data by Mississippi illustrates vividly how easily incorrect and misleading conclusions may be obtained by employing actual 1953 data and not investigating and finding out all the pertinent and relevant facts and making necessary adjustments on the basis of such facts. If 1953 data were to be taken, the only reasonable course would be to accept figures relating to actual 1953 operations only after giving consideration and effect to such adjustments as were necessary to reflect the future correctly. The determination of the correct-

[16] Mississippi Brief, P. 23.

ness of all such adjustments would, of course, require an additional period of time (during which determination of the issues would be further delayed) while the Staff and the intervening

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parties entered upon another field investigation, study, and analysis of United's operations. This process would, of course, further prolong this already protracted and lengthy hearing.

Among the matters which would have to be given consideration anew would be sources of supply. This matter was considered by the Staff in connection with the cost of purchased gas for the test period, and in its study of this problem through the end of 1953 the Staff gave consideration to shifts in sources of supply [17] as well as contract prices, both of which influenced the cost of purchased gas. Such factors would require adjustments after investigation, no matter what test year was selected.

Mississippi's contentions, insofar as they are specifically related to being adversely affected by an incorrect estimate of gas sales by the Staff in this proceeding, appear to be without merit. In regard to this phase of the matter, Mississippi's brief states that the Staff, in making adjustments for the calendar year 1952, incorrectly estimated that Mississippi would receive a higher volume of gas than it actually received and that for such gas it would pay more dollars than it actually paid. Mississippi points out that it received less gas and paid less dollars that the Staff estimated. Assuming that Mississippi were right, and that the figure it set forth in its comparison [18] should have

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[17] See pp. 16, 17 herein referring to shifts in United's sources of supply adverted to in the Commission's Opinion in Docket G-1447 as an example.

[18] Mississippi Brief, p. 23

been applied, the effect of the Staff's allegedly incorrect estimates, insofar as the level of rates to Mississippi is concerned, would be



to lower the unit cost of gas to Mississippi and not to increase it. Had the Staff used as a basis for determining rates the lesser volume of gas contended by Mississippi as being the correct amount, the overall effect would have been to spread United's fixed costs over a smaller number of units. This would tend to increase rates to Mississippi, rather than to decrease them. Accordingly, even if there were error of the character referred to by Mississippi in the Staff's estimates, such error could not be said to have contributed in any degree to raising United's rates to Mississippi, and may have resulted in lowering United's rates to such company. The use of such 1952 figures as estimated by the Staff could not be said under the circumstances to have adversely affected Mississippi.

The fact that some adjustments may not have been mathematically exact is hardly a sound basis on which to reject the adjustments when considered as a whole, where such adjustments are, on an overall basis, supported by substantial evidence, and where on the whole they are correct. Rate making is not an exact science, and where an error cannot be said to be either substantial or prejudicial, it cannot exercise a controlling effect on the decisional process.

The Presiding Examiner finds that the contentions of Mississippi regarding adjustments made to cost of purchased gas, as indicative of the employment of an improper test period, are without merit; and also finds that the adjustments made to purchased gas costs are supported by substantial evidence and were proper, correct, and based on sound principles.

Mississippi claimed in one section of its brief, as it did during the hearing, that United "did file with the Commission and present data as to the actual results of its operations for the year 1953, adjusted,* * *" (p. 11, Mississippi Brief). However, at a later point in its brief (pp. 24, 25) Mississippi shifted its ground, as it did at the hearing, and stated that

> "this data showing the actual results of United's latest 1953 operations (as adjusted to reflect changes during the year) was submitted to the Commission's Staff—about April 30, 1954—and was made available to the parties to this proceeding (R. 3997)." [19]

The facts are that counsel for Mississippi sought to have certain material, which he described as United's actual 1953 figures, adjusted, pertaining to cost of service, introduced in evidence by reference to the files of the Commission, as permitted by Rule 126(c)(2)(i) of the Commission's Rules of Practice and Procedure. As it turned out, and as was pointed out at the hearing, Mississippi's counsel was in error in that the material in question had never been filed with the Commission by United. Accordingly, the material could not be received in evidence as an exhibit by reference to the files of the Commission. Mississippi's counsel, under such circumstances, at the hearing requested that the material be marked as Exhibit 99 for identification and the Presiding Examiner directed that such material be so marked. Mississippi then requested that Exhibit 99 for identification be received in evidence.

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[19] Mississippi's record reference does not support its statement as to the facts regarding the furnishing of such material to the staff by United. Staff counsel denied on the record having received such material from United. No proof to the contrary was offered by Mississippi.

At the hearing, Mississippi's counsel further stated that he understood the documents in his possession (Exh. 99 for identification) contained United's actual 1953 figures "with full explanation for each adjustment and justification therefor".

Mississippi presented no proof whatever of the authenticity of its claim that the documents in question were genuinely what its counsel understood them to be, i.e., figures which United acknowledged, claimed, admitted, or represented as being its "actual 1953 figures with full explanation for each adjustment and justification therefor". And such failure to present proof concerning the character of the documents in Mississippi's possession occurred in the face of the affirmative assertion by United's counsel that the documents (Exh. 99 for identification) were not what counsel for Mississippi understood them to be. In this connection, it may be noted that the following statement by United's counsel appears in the transcript:[20]

> "Mr. Horning [counsel for Mississippi who sought to introduce Exh. 99 for identification into the record] is mistaken in his statement that they are actual figures. They are figures that contain some character of an adjustment. I do not recall what that adjustment was, but they are not actual figures. They are actual plus some character of an adjustment. So in any event it is not competent."

The Presiding Examiner asked counsel for United the following question:

> "The figures, as I understand, are really not a full and complete study of 1953. Is that correct Mr. Fletcher?"

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[20] Tr. 4007

(7798)

The following answer was made:

"Yes, sir. And they are clearly irrelevant for the reasons I stated, as well as those of Mr. McAllister."

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The record also shows that Texas Gas objected to the receipt in evidence of the proffered exhibit,[21] pointing out that it could not "bind any of the parties until they are supported by competent testimony in this particular record * * *. They are absolutely meaningless, incompetent and of no value at all until they are supported, and they haven't been supported".

No witness was offered to substantiate Mississippi's claim that it was offering authentic figures constituting United's cost of service for 1953, as adjusted; nor was any witness presented to show what in fact these documents, which were being offered, were. The statement of counsel as to what they were, particularly in the face of a denial by opposing counsel, is not a substitute for proof. No foundation upon which these documents could be received in evidence was laid, and they were excluded.

Thus it is clear there was no proof whatever that the documents offered by Mississippi (Exh. No. 99) were in fact United's actual 1953 figures, as adjusted for known causes.

Staff counsel having this case in charge also denied receiving the proffered exhibit from United.

Another claim made by Mississippi in its brief is to the effect that actual 1953 data show that "United's estimated purchase gas costs for 1952 adjusted * * * exceeded the actual purchased gas costs in 1953 * * *" by $4,800,000 (P. 25, Mississippi Brief).

The amount actually paid by United for 1,037,995,212

[21] Tr. 4004

Mcf of gas during 1953 as reflected in its annual reports to the Commission was

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$84,415,828.34 (Item U). The average cost during 1953 as reflected in such report was 8.13¢ per Mcf. The price of gas per Mcf for United, based on contract prices with its suppliers at December 31, 1953, was very close to 8.50¢ per Mcf. The Staff estimated United's gas requirements at 1,050,000,000 Mcf. The Staff, for test purposes, normalized gas costs at the prices current at December 31, 1953, namely, 8.50¢ per Mcf. The difference between the unit price of 8.13¢ and 8.50¢ per Mcf, together with the difference in volumes accounts for the $4,800,000 referred to by Mississippi. The normalization in pricing gas was supported by substantial evidence and was proper.

Oddly enough, Mississippi urges that this difference of $4,800,000 between the actual and the adjusted figures for gas purchases for 1953 requires a reopening of the hearing to receive 1953 adjusted data, when it is quite apparent that 1953 gas purchase figures, as adjusted, were used to obtain appropriate figures for United's cost of gas purchased and applied to the test year, viz., calendar year 1952, as adjusted. It may be a work of supererogation to point out that if 1953, as adjusted, were employed as the test year, proper normalization of gas prices for United would have required that prices be fixed at a date subsequent to December 31, 1953. There is no ground to believe that gas prices subsequent to December 31, 1953 were lower than they were at that date, and there is good ground to believe that they were higher. If the normalization, which Mississippi apparently seeks, were made, the cost of purchased gas would be higher, not lower.

Mississippi cites *Indianapolis Water Company* v. *McCart, et al.*, 89 F. 2d 522 (1937), affd. 302 U.S. 419 (1938) to support its contentions

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regarding appropriate test period. The McCart case is typical of a line of rate cases following *Smyth* v. *Ames*, 169 U.S. 166 (1898), in which emphasis was laid principally upon rate base. This major emphasis was brought about by the Supreme Court's declaration that the constitution required rates to be calculated on "fair value." The Supreme Court in *McCardle* v. *Indianapolis Water Company*, 272 U.S. 400, determined that "spot" reproduction cost was practically decisive of fair value.

The line of reasoning employed by the Courts in these earlier cases has not been followed since 1944 when the Supreme Court, in *FPC v. Hope Natural Gas Company*, 320 U.S. 591, radically changed the course of utility regulation by holding that commissions could lawfully use an original cost rate base. Since 1944 the Federal Power Commission and the commissions in most of the States have used original cost.

In passing, it may be observed that both the problems and the company involved in the McCart case were totally unlike that under consideration here. However, Mississippi referred to some language in the McCart case apparently in an effort to analogize the time factors in such case with those in the instant case.

The facts in the McCart case, insofar as they relate to appropriate test period, may be summarized as follows:

In 1931, the City of Indianapolis filed a petition with the Public Service Commission of Indiana seeking a reduction of water rates for small consumers. The Commission fixed rates in 1932, effective January 1, 1933. The water company filed a bill in the District Court on December 31, 1932

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alleging such rates were confiscatory. The District Court appointed a special master who held hearings and filed a

report on May 18, 1934 finding the "fair value", i.e., the reproduction value of the water company's properties as of April 1, 1933.

After a hearing upon exceptions to the special master's report, the District Court dismissed the water company's bill of complaint alleging confiscation. In the District Court's final decree the Court found that the "fair value" of the company's property on November 29, 1935 was the same as it was 32 months earlier, i.e., on April 1, 1933.

An appeal was taken to the Court of Appeals for the Seventh Circuit. The Appellate Court took judicial notice of the upward trend of prices between 1932 and 1935, and held that the District Court had erred in determining in its decree that the valuations as of April 1, 1933 were applicable to the date of the decree in November 1935, without taking into appropriate account the changed conditions in the interval.

A casual reading of Mississippi's quotation from the opinion of the Court of Appeals in the McCart case might lead one to the conclusion that such court had sent the case back to the District Court because it had found the test period for determining cost of service was unlawful or improper. Such was not the case, however. The Court of Appeals sent the case back to the District Court only for the purpose of determining the "fair value" of the water company's properties. In this connection, it will be observed that in the course of the hearings before the special master an estimate of the net income applicable to the return for the year 1933 was given by a witness employed by the Public Service Commission and a second estimate was given by a witness for the water



company. The hearings before the special master were held between May 1, 1933 and August 10, 1933, and a re-

opened session was held on October 18, 1933. Although the special master offered to receive evidence on April 18, 1934 as to actual operations, the parties informed the master that they did not desire to offer such testimony. However, the Appellate Court did not send the case back to receive such additional evidence, saying that if the water company chose not to put into evidence the actual results of 1933 operations and was content to rest on the estimates appearing in the record, the latter was in no position to complain, and the Court accepted "the figures as found by the master and approved by the Court".

About seven years after the initiation of the proceedings by the City of Indianapolis, the case reached the Supreme Court which held that the Court of Appeals was correct in taking judicial notice of the trend upward in commodity values and that reversal of the District Court was right. By this time, however, so much time had elapsed that the Supreme Court sent the case back to be tried anew as to all issues.[22]

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[22] The quotation from the McCart case contained in Mississippi's brief is not complete, stopping in the middle of a sentence (see 89 F. 522 p. 528) without specifically indicating such fact. The quotation as set forth in Mississippi's brief reads as follows:

"The question of what the net income had been for the year 1933, under the new schedule of rates, was not at that time any longer a matter of estimates but had become an established fact and the facts were in the possession of the company. Prophecy was then entitled to give way to experience." In fact, the word "experience" did not end the sentence, for the last sentence quoted read as follows: "Prophecy was then entitled to give way to experience and under such circumstances, if the company chose to remain silent with the facts in its possession, it is in no position to complain."

Apparently, to explain why it did not complete the quotation it chose to employ, Mississippi footnoted the quotation as follows: "In that case, it was the company which chose to remain silent and was forced to accept the results of the Commission's decision. In this case it is United's gas customers represented by Mississippi, who are injured but refuse to remain silent."

The fact in these proceedings is Mississippi stands alone and rep-

A time factor of seven years is not analogous to the time factors involved here. The McCart case is of no value as precedent in relation to any phase of the instant proceeding.

*New England Telephone & Telegraph Company* v. *Department of Public Utilities* (Mass.) 2 P.U.R. 3d 464, 476 (Mass. D.P.U., Sept. 30, 1953) and 6 P.U.R. 3d 65, 79 (Mass. Sup. Ct., Sept. 20, 1954) cited by Mississippi in its brief does not assist it. The problem involved in these proceedings was one of "regulatory lag" and the unjust effect of such "regulatory lag" upon utilities seeking to increase their rates in inflationary times.

It has been claimed by many that in times of inflation, rate adjustments lag behind the increase in operating expenses, and therefore utilities, operating under fixed rate schedules may not earn a fair profit as prices rise.

The problem of test period, as exemplified in the New England Telephone cases points to the possibility of United being injured by the test period employed and its customers (including Mississippi) being the correspondent beneficiaries of lower rates than those which they are entitled to enjoy. It appears that the citation of these cases does not help Mississippi to show that it was the victim of any injustice or harm, and they are not helpful to Mississippi's contentions here.

Normal requirements of agency investigation under Sections 4 and 5 of the Act inevitably lead to some delay in arriving at conclusions in the rate-making process. For example, *In the Matter of Canadian River Gas Company*, 3 FPC 32, 54, the test period employed was 1939. Hearings were concluded on April 21, 1941. The Commission, after pointing out the difficulties of

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resents no one but itself, which it has the right to do. Such fact, however, does not justify Mississippi arrogating to itself a position it does not occupy.

resolving doubts as to the future, held that

> "Nevertheless, for purposes of this order, 1939 revenues and costs are to be considered representative of the relationship that will exist between these items in the future".

It is fair to observe that it would not be possible for the Commission to function unless it afforded its Staff time to analyze the data filed by a company in connection with an increased rate filing or to analyze the books and records of the company in an investigation. The hearings themselves are exceedingly broad in scope, usually involve highly complex problems, and require a great deal of time for preparation as well as for actual hearing. It has been contended that delay is, in general, far more costly to applicants than it is to the customer companies, particularly in times like the present.[23] The contention to the contrary made here is not supported.

Taking the evidence as a whole, the Presiding Examiner finds that the employment of calendar year 1952, as adjusted, as the test period, was proper and lawful, and the use of this period with the adjustments made was fairly representative and affords a proper and lawful basis for fixing rates for United for the immediate future. Moreover, the use of such period is consistent with past Commission practice and principles enumerated in numerous Commission opinions.[24]

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[23] Cf., Dougherty, Comments on the Regulatory Lag, 50 P.U. Fort. 631 (1952).

[24] *Atlantic Seaboard Corp.*, Opinion No. 225 (Mimeo. ed., p. 10); *Northern Natural Gas Co.*, Opinion No. 228 (Mimeo. ed., p. 9); *El Paso Natural Gas Co.*, Opinion No. 278 (Mimeo. ed., p. 3); *Michigan-Wisconsin Pipe Line Co.*, Opinion No. 275 (Mimeo. ed., p. 8); *Home Gas Co.*, Opinion No. 272 (Mimeo. ed., p. 5); *Panhandle Eastern Pipe Line Co.*,

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COST OF GAS PURCHASED

The Staff's brief, among other things, summarizes the method by which it arrived at its independent determination of United's purchased gas cost and it reads, in part, as follows:

> Starting with normalized sales volumes for the test period (T. 3457, Exh. 166), witness Stockwell normalized gas purchase requirements after verification of gas-supply data furnished by United (T. 3453-54). Checks of gas fields and a comparison of normalized requirements with actual 1953 data demonstrated the accuracy of the normalization (T. 3455, 3458, 3462, 3464, 3468). The gas requirements were normalized by fields, by districts, by areas, and further by purchases from non-affiliated producers (arm's-length sales) and from Union (Exhs. 82-88). Where judgment as to the source of gas was vital, Stockwell relied on the experienced judgment of United's gas supply department personnel (T. 3741)."

As we have indicated heretofore, we have credited the testimony of staff witnesses relating to normalization of natural gas purchase requirements and sales volumes for the test period.

The cost of purchased gas is extremely important in this case because in excess of $89,000,000 or over 60% of United's cost of service for the test period, represented the cost of natural gas purchased.

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Union provided approximately 22% of United's natural-gas requirements for United's Monroe, Shreveport, Dallas, Houston and San Antonio operating districts for the test

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Opinion No. 269 (Mimeo ed., p. 10); *Mississippi River Fuel Corp.*, Opinion No. 253 (Mimeo. ed., p. 10); *Pittsburgh* v. *Pittsburgh and West Virginia Gas Co.*, 7 FPC 112, 128-131; *Mississippi River Fuel Corp.*, 4 FPC 340, 349.

period.[25] Union is a wholly-owned affiliate of United Gas Corporation, as is United.

Prior to the Panhandle decision (Commission Opinion No. 269) the Commission determined the cost of natural gas where a natural-gas company itself, or an affiliated company was the producer, on the basis of actual operating expenses incurred in the production of the gas and allowed a return on the original cost of investment less accrued book depreciation. However, where a pipe-line company bought gas from an independent producer, the price paid to such independent producer was included as part of the pipeline's recoverable cost of service. Staff's presentation included cost of gas purchased from independent producers as of December 31, 1953 adjusted to calendar 1952, as part of United's cost of service.

During the course of this hearing, Mississippi's counsel stated that "We are not contesting the prices paid non-affiliated producers." Mississippi, however, in its brief objected to the inclusion in United's recoverable cost of service of sums paid by United to non-affiliated producers and to Union in the absence of affirmative proof that applications for certificates of public convenience and necessity and rate schedules had been filed pursuant



to Commission Order No. 174-A.

Mississippi's brief asserts (pp. 27, 28) that $17,000,000 out of the total of $89,218,255.00 represents cost of gas purchased by United from Union. A table at page 31 of Mississippi's brief shows that $10,340,348.00 represents cost of gas purchased from Union for the Monroe, Shreveport, Dallas, Houston, and San Antonio operating districts.

[25] While evidence was presented concerning the total amount of gas supplied to United, no evidence was presented concerning the percentage supplied by Union for the balance of the system for the test period.

The table shows cost of gas for other operating districts of United of $43,332,200.00, but contains no information concerning the percentage of gas supplied by Union. In referring to $17,000,000.00 as the cost of gas purchased by United from Union, Mississippi refers to page 3720 of the transcript. The transcript reference does not support Mississippi's statement as to the $17,000,000.00 amount and there is no evidence in the transcript as to the total specific amount of dollars paid to Union by United for the test period.

Although Mississippi apparently in one part of its brief included $17,000,000.00 as a sum which United was entitled to receive for gas purchased from Union, it objected in another part of its brief to the inclusion of cost of gas purchased from Union at any figure. In still another part of its brief, Mississippi shifted the emphasis of its objections from the prices paid non-affiliated producers for gas purchased to prices paid by United for gas purchased from Union. In this connection, Mississippi's argument may be summarized as follows:

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United executed numerous contracts with Union, many as far back as 1937. Between 1937 and June 7, 1954, numerous contracts and supplementary or amendatory contracts were entered into by these companies. Such supplementary contracts, among other things, increased the price of gas per Mcf payable by United to Union. Mississippi claimed that United was limited in the amount which it is entitled to recover for cost of gas purchased from Union to the amount per Mcf set forth in initial contracts between United and Union, and was not entitled to include in its cost of service natural gas as priced and paid for by United in the supplementary or amended contracts. Mississippi points out that if its theory of gas pricing for United were

applied here, the cost of service figures might be so reduced that they would preclude any rise in the level of United's rates.[26] Mississippi contends further that, on the basis of its analysis of the contracts between United and Union in the period between 1937 and 1953, covering gas from the Monroe, Shreveport, Dallas, Houston and San Antonio districts alone, United's cost-of-gas-purchased account has been inflated by over 4¾ million dollars, of which Mississippi is being asked to pay over $900,000.



To support its contentions, Mississippi has cited a line of cases[27] which hold in substance that where affiliated companies enter into contracts and there is "an absence of arm's length bargaining between two corporate entities involved, and of all the elements which ordinarily go to fix market value" and where an increase of rates is sought, a regulatory agency or a court is justified in ignoring such contracts and should look to other factors to determine just and reasonable costs.

Mississippi has established that from 1937 to the present time United Gas Corporation has owned all the stock of both United and Union and that the power of United Gas Corporation to exercise its control over such companies has manifested itself through the election of interlocking directorates and the selection of joint officers.

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[26] Mississippi's brief, page 38.

[27] *Western Distributing Company* v. *Public Service Commission of Kansas, et al.*, 285 U. S. 119 (1932); *Smith* v. *Illinois Bell Telephone Co.*, 282 U. S. 133, 152-153 (1930); *Cities Service Gas Company* v. *Federal Power Commission*, 155 Fed (2) 694 (8th Cir. 1946), cert. denied, 329 U. S. 773 (1946); *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 142 F. 2d, 943, 957 (10th Cir. 1944), cert. denied, 324 U. S. 626 (1946); *Natural Gas Pipeline Co.* v. *Slattery*, 302 U. S. 300, 307 (1937); *Dayton Power & Light Co.* v. *Public Utilities Commission* (Ohio), 292 U. S. 290, 308 (1934); *United Fuel Gas Co.* v. *Railroad Commission of Kentucky*, 278 U. S. 300, 320 (1929).

If there has been an absence of arm's length bargaining in the making of the contracts between United and Union, as there appears to have been, such absence is characteristic of both the



initial and the amendatory contracts. Accordingly, the cases relied upon by Mississippi do not support the conclusion that only the initial contracts, but not the amendatory contracts, should be considered valid. They establish that both initial and amendatory contracts should be ignored unless they are supported by objective criteria.

If the prices in contracts between Union and United are to be ignored, we must then look to other factors to determine what is fair, just and reasonable for United to obtain for natural gas acquired from Union. However, before embarking upon such determination, it appears advisable to consider at this time Mississippi's other contentions relating to cost of gas purchased.

Certain of Mississippi's contentions are made on an alternative basis. These contentions are to the effect that all of United's "gas purchases must be made pursuant to contracts legally filed and accepted by the Commission as rate schedules" or that "all of United's gas purchase costs are subject to investigation, cross examination as to the justification for the precise volumes and prices used and to possible whole or partial disallowance."

The inconsistency of the alternative contentions made by Mississippi is apparent when it is realized that the first alternative referred to above, if accepted, would require a conclusion that, absent filing pursuant to Commission Order 174-A, there could under the law be no recovery for payments made for purchased gas, at least for test period purposes, whereas under the second alternative mentioned,

there can be such recovery even though no filing whatever were made under Commission Order 174-A or any other filing rule or regulation of the Commission.

To support its contention that cost of gas purchased from non-filing producers cannot be included in United's recoverable cost of service for the test period, Mississippi cites as precedent *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U. S. 246, 251 (1951).

The Montana-Dakota case is wholy inapplicable to the instant situation. The issue involved in such case was whether an action would lie to recover losses alleged to have been sustained by petitioner in paying for service at filed rates when it and the respondent had an interlocking directorate and were under common control. The principle which was involved was that, where a rate is filed, accepted, or approved by the Commission, a customer company cannot be made to pay a different rate than the filed rate, nor, on the other hand, can it recover payments made under the filed rates (which allegedly were inflated) because acceptance of such filed rates was brought about by reason of petitioner's dominance by the common management of petitioner and respondent, and petitioner's consequent lack of independence and ability to protest. It was in this context that the court, in Montana-Dakota, said "It [petitioner] can claim no rate as a legal rate that is other than the filed rate * * *."



This language was quoted by Mississippi in its brief, but a quotation relating to the inability of a litigant to recover alleged overcharges in filed rates which it accepted and paid is not applicable to the instant situation, where the value of the gas obtained has been established in these proceedings by objective standards. The facts involved

in the Montana-Dakota are entirely different from the facts in the present case. Moreover, the principles of law involved and the language quoted from the Montana-Dakota case have no application here. It may also be pointed out that the Commission's rules relating to filing were not drafted to cover cases such as United's purchases from Union during the test period.

Certain other cases cited by Mississippi on this point in its brief are equally impertinent.[28] In general, it may be said that such cases stand for the proposition that when rate schedules are filed and accepted, then they are paramount to rights established by earlier franchises or contracts entered into between customers and the filing company, and also for the proposition that when a rate schedule is filed and accepted, no different rate may be charged.

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Neither the Mobile Gas Service case nor the Tyler gas case[29] is of assistance at this point in the proceeding because the basic issue is such cases related to the requirement of payment at increased rates subsequent to filing and

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[28] *North Hempstead* v. *Public Service Corp.*, 231 N. Y. 442, 132 N.E. 144 (1921); *Public Service Commission* v. *Pavilion Natural Gas Company*, 232 N. Y. 143, 133 N. E. 427 (1921); *Kansas City Power & Light Co.* v. *Midland Realty Co.*, 338 Mo. 1141, 93 SW 2d 954 (1936) affd; *Midland Realty Co. v. Kansas City Power & Light Co.*, 300 U.S. 109 (1937); *Suburban Water Co.* v. *Borough of Oakmont* 268 Pa. 243, 110A 778 (1920); *Duquesne Light Company* v. *Public Service Commission* 273 Pa. 287, 117A 63 (1922); *Leiper v. Baltimore & P. R. Co.*, 262 Pa. 328, 105A 551 (1918); *V & S Bottle Co.* v. *Mountain Gas Co.*, 261 Pa. 523, 104A 667 (1918), app. dis. 251 U. S. 544 (1919); *Harrison Electric Co.* v. *Citizens Ice and Storage Co.*, 149 Ark. 502, 232 S. W. 932 (1921); *Cotton* v. *Commonwealth Edison Co.*, 349 Ill. app. 490, Ill. N. E. 2d 363, 366 (1953).

[29] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp. and Federal Power Commission*, 215 F. 2d, 883 (3rd Cir., Sept. 7, 1954), certiorari granted February 28, 1955; *Tyler Gas Service Co., et al.* v. *United Gas Pipe Line Co.*, 217 F. 2d, 73 (5th Cir., Nov. 24, 1954).

before a hearing was had concerning the lawfulness of the increased rates which were sought.

Here, a determination is being made after a hearing on the merits. The plaintiffs in both Mobile and Tyler recognized, as did both courts of appeal, that the Commission after a hearing on the merits could fix the rates at a level which it determined to be just and reasonable, and which might be at variance with and in complete disregard of the contract rates. Here we are engaged in determining just and reasonable rates after a full and complete hearing.

The legal effect upon rate making in this case by reason of a failure to file eiher rate schedules or certificates of public convenience and necessity pursuant to Commission Order No. 174-A, as modified by any supplier of gas to United,[30] must be considered in the following context:

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Prior to the Phillips decision,[31] the Commission had exercised its jurisdiction under the Act principally to regulate companies primarily engaged in pipe-line operations and activities incidental thereto. In such cases where the pipe line was affiliated with a gas producer through common control, or where a pipe line controlled a gas producer, only the pipe line filed applications for certificates of public convenience and necessity under Section 7 of the Act and rate schedules pursuant to Section 4 of the Act. Although the Commission exercised its rate-making powers with regard to determining how much an affiliated producer could get from the pipe line for gas which it produced and sold to such pipe line, the Commission did not require a separate filing by the producing affiliate under either Section 4 or 7 of the Act.

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[30] No proof was adduced concerning filings by United's suppliers under Order 174-A.

[31] *Phillips Petroleum Company* v. *State of Wisconsin, et al.*, 347 U.S. 672.

The Supreme Court, in Phillips, held that the authority vested in the Commission by the Act was broader than the Commission had theretofore exercised. The Court held, in substance, that the Commission had jurisdiction over sales of natural gas in interstate commerce for resale, and that the exclusionary provisions of Section 1 (b) of the Act relating to "the production and gathering of natural gas" did not encompass an exemption from the provisions of the Act for sales of natural gas for resale made in interstate commerce.

Prior to the Phillips decision, the Commission had adopted certain rules and regulations under the Natural Gas Act governing the



filing of rate schedules and certificates of public convenience and necessity by natural gas companies, viz., Part 154—Rate Schedules and Tariffs, and Part 157—Applications for Certificates of Public Convenience and Necessity, Subchapter E—Regulations under the Natural Gas Act, Chapter I, Title 18, Code Federal Regulations. In general, it appeared that these regulations had been promulgated upon an assumption that the ambit of the Commission's jurisdiction was not as large or embracive as that which the Supreme Court in Phillips had found to exist. These regulations, which had been adopted long before June 7, 1954, when Phillips was decided, were principally designed for filings by pipe-line companies. Moreover, a reading of the provisions of these regulations indicates that they were drafted primarily for application to companies which were much larger than many of those held by Phillips to be subject to Commission jurisdiction.

In an effort to provide as workable and simple a set of regulations as was reasonably possible for the several thousand persons engaged in the production and gathering of natural gas, who transported or sold such gas in inter-

state commerce and were held by Phillips to be subject to Commission jurisdiction, but who were not primarily engaged in the operation of an interstate pipe line, the Commission, on July 16, 1954 issued its Order No. 174 prescribing rules and regulations governing the filing of rate schedules and certificates of public convenience by persons subject to the Act under the Supreme Court's holding. On August 16, 1954, the Commission by the issuance

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of its Order No. 174-A rescinded and superseded Order No. 174. Order No. 174-A was subsequently amended by Order No. 174-B issued by the Commission on December 17, 1954.

These new rules and regulations are limited by their terms to transactions and operations conducted on and after June 7, 1954, the date of the Supreme Court's decision in Phillips. These rules and regulations treat the rates of "independent producers" subject thereto which were in effect prior to June 7, 1954 as "initial" rates, and such rates are not subject to suspension except where increases above prices in effect prior to June 7, 1954 are involved. Moreover, the Commission's accounting requirements are not made applicable to filings thereunder.[32] The rules do not require persons subject thereto to justify the rates in effect prior to June 7, 1954 and filed thereunder, and there is no provision for a "roll-back" of rates charged by persons who filed pursuant to Orders Nos. 174-A and 174-B.

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It may also be observed that, while the Commission has authority to investigate rates subject to its jurisdiction

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[32] The Commission's Uniform System of Accounts for Natural Gas Companies, among other things, requires all cost expense and revenue data submitted in support of filings be segregated and classified. The absence of accounting requirements suggests that the Commission's Uniform System of Accounts in its present form is not readily applicable for use by an "independent producer" or by combination oil and gas producers and consequently could not be applied without revisions to companies subject to Order No. 174-A.

under Section 5(a) of the Act, the determination of the reasonableness of prior unfiled rates and past increases in contract prices, for the purposes of recovery of sums of money for natural gas paid thereunder, is not a matter over which the Commission under the Natural Gas Act has any authority.

The Commission in its El Paso opinion[33] referred to its unwillingness to permit its opinion in Panhandle (Opinion 269) to exclude, in the future, consideration of other methods of valuing gas and then stated that "We are, however, presently of the view that such method as may be adopted in the future should be employed for both the independent producer and the pipe-line company."

The Commission is, of course, faced with many complex matters resulting from the Supreme Court's decision in Phillips particularly with regard to establishing principles applicable to fair and lawful determination of rates for producers who had believed that they were exempt from Commission jurisdiction under the exclusionary provisions of Section 1(b) of the Act. In connection with these problems, the Commission pointed out that "To facilitate the reaching of an informed opinion on this question, the Commission has issued a notice of proposed



rule making inviting all interested parties including producers, gatherers, transmission companies, distributors, state commissions, municipalities, and representatives of consumer interests to submit their views to the Commission concerning principles and methods to be applied by it which could be used in regulating the price of natural gas sold by producers in interstate commerce for resale. Presumably such principles and methods could also be applied to gas produced by transmission companies."

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[33] *In the Matter of El Paso Natural Gas Company*, Opinion No. 278 (Mimeo ed, p 6, et seq.)

It is in this context that Mississippi seeks, in effect, to impose a sanction upon United by excluding from its recoverable cost of service for the test period amounts paid by United to Union and to non-affiliated producers, by reason of United's failure to put in evidence showing that Union and other producers have made filings pursuant to Commission Order 174-A, as amended. Mississippi asks that the Presiding Examiner take official notice of Union's action against the Commission in the United States District Court for the District of Columbia [34] and asserts that Union, and possibly other producers have failed to file a rate schedule pursuant to Commission Order No. 174-A, as amended.

It may be that Union or other United suppliers may have become subject to the fines and penalties provisions of the Act by reason of their failures to file rate schedules under 174-A.[35] However, whether



such penalty provisions are or are not applicable to such producers, it does not follow therefrom that Mississippi or any other customer is entitled to have excluded from United's cost of gas purchased for the test period purchased from a producer who has decided to litigate the question of the validity of the Commission's order before complying therewith. Specifically it does not follow that if Union is unsuccessful at the end of the litigation it will not comply with the determination made by the courts. The imposition of a sanction such as the exclusion from United's recoverable cost of gas obtained from Union during the test period because of Union's failure to file or because some other

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[34] The Presiding Examiner takes official notice of *Union Producing Co.* v. *Federal Power Commission*, 127 F. Supp. 88 (D. C.).

[35] It should be made clear that the Presiding Examiner is not attempting to express any opinion that such provisions are or are not applicable to Union or any other producer.

producer may have failed to file rate schedules for gas which it supplied to United finds no warrant in the law. In this connection, it may be pointed out that even in the absence of any filing under Order No. 174-A, as amended, producers subject thereto may not under Section 7(b) of the Act abandon service to United without an order of the Commission. On the other hand, United cannot obtain natural gas without paying for it.

There was no good ground for granting Mississippi's application for a subpoena duces tecum addressed to a member of the Staff requiring him to compile a list of all United's producers who had filed under Order No. 174-A. The denial of such request did not, as Mississippi contends, deprive it of due process.

## 7821

As we have noted, one of Mississippi's alternative approaches to price determination was stated as follows: "*all* of United's gas purchase costs are subject to investigation, cross examination as to the justification for the precise volumes and prices used and to possible whole or partial disallowance." (Italics supplied)[36]

This approach, if adopted, would result in the institution of hundreds of rate cases which could not even be presented for a considerable period of time because the investigation, which would have to be conducted by the Commission's staff before institution of proceedings would necessarily be time consuming and, of course, statutory notice to producers before instituting hearings would be imperative. If this course were followed, these proceedings would be prolonged for several additional years. By the time it was determined which of United's suppliers were subject to the Commission's jurisdiction and what the rates of such sup-

[36] Mississippi, Brief, P. 6.

pliers should be, the rates charged by such suppliers in 1952 or 1953 would be of academic rather than functional value for purposes of rate determination.

As United's counsel stated in regard to this matter during the course of these hearings:

> "I am not in disagreement with what Mr. McAllister said. I am not in disagreement with what the Examiner said, nor what Mr. Fletcher said about getting into 600 rate cases. We are not asking for that. We do not intend to do it, and I think it would be a foolish thing, and I think it is an illegal thing."

**7822**

Following this "concession" by Mississippi's counsel Mississippi shifted the brunt of its attack from gas prices paid non-affiliated producers to prices paid Union. This matter was gone into at great length during the course of the hearings.

The approach of counsel to the Commission to establishing the figure of $89,218,255 for cost of gas purchased may be summarized as follows:

A properly qualified Staff Witness examined all contracts entered into between United and Union, and between United and other producers and found out what prices United was paying for natural gas under such contracts as of December 31, 1953. The witness applied such prices to normalized gas requirements for the test period and determined in his capacity as an accountant that United's cost of gas purchased was $89,218,255.00. This figure of course included gas supplied to United by Union.

The inclusion in cost of gas purchased of amounts of gas from Union at the price per Mcf paid by United is challenged by Mississippi as unjust, unreasonable and unlawful, in part, for reasons already discussed. Mississippi also

complained that while the Staff witness examined the contracts in question, he made no statement that he "consid-

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ered such contract costs to be proper, fair, and reasonable." The Staff claimed that the contracts and prices contained therein were examined critically and were not considered perfunctorily or mechanically, as Mississippi claimed that they were.

It may be pointed out that determination of whether the prices contained in United's contracts with Union were "proper, fair, and reasonable" is a matter for the Presiding Examiner or the Commission to decide on the basis of the evidence presented, and not a matter for the witness to determine. This is not to say that contentions made by the parties, including the staff, with regard to the evidence or the law, are not entitled to consideration. They are, and they have been considered.

The Staff claimed that the prices determined upon for gas purchased from Union which went into United's cost of gas were founded upon substantial evidence. The evidence and legal considerations which the Staff considered applicable to prices of gas obtained from Union rested upon the relationship of such prices to prices paid to non-affiliated producers by United in the same districts.

It will be noted that the Staff witness who testified with regard to this matter prepared certain exhibits (82-88 inclusive) which were received in evidence. Examination of the exhibits shows that on a

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comparative basis United's gas purchase costs, insofar as gas obtained from Union is concerned, were not in excess of the prices paid in the same districts to non-affiliated producers, and on an overall basis were less than those paid by

United to non-affiliated producers. In fact, the exhibits prepared by the Staff and introduced in evidence show that the weighted average price paid by United to its non-affiliated producers is substantially more than the average weighted price paid by United to Union, and this fact was not contradicted by any other evidence in the record.

Evidence introduced by United[37] shows that the average weighted prices paid by United to Union between 1948 and 1953 were lower than the average prices paid to non-affiliated producers, i.e., producers whose prices Mississippi does not challenge as being unfair, unjust or unreasonable.

While it is true that United's contracts with Union were not reached as a result of arm's length bargaining, the eivdence presented shows that the prices contained in such contracts, when based upon objective standards unrelated to the relationship between United and Union, were not above a level which Mississippi has conceded to be fair, just, and reasonable for others, i.e., prices paid by United to Union were not above prices reached between United and non-affiliated producers as a result of arm's length bargaining.

**7825**

In its petition for rehearing filed November 23, 1954, following the issuance of Commission Opinion No. 277, Mississippi asserted that "The Commission erred in the use of the prices charged by Union Producing Company, an affiliate of United, for gas purchased from said affiliate, whereas the Commission should have determined the price that should be allowed in accordance with the principles established in the Panhandle decision (Opinion No. 269), and in refusing to determine the reasonableness of the prices paid by United to said affiliate and other producers."

There is no basis for concluding that if the Panhandle approach to price determination were applied here instead

[37] See Exh. 161.

of the one that was adopted that there would be any reduction in the amount arrived at for gas obtained from Union.

Despite Mississippi's claim in its petition that the Panhandle approach to price determination should have been applied here, during the course of the hearing accorded the parties, one of Mississippi's Counsel appeared to shift its position on this point, taking the view that while Panhandle examplified a justifiable legal theory of pricing for a company which produced its own gas, it was not applicable in this case because two different companies were involved, i.e., United and Union, and "When you have contract relationships those contract relationships control." Accordingly, it appeared that at the very same time Mississippi was arguing that "contract relationships control" it contended that they did not control because of the affiliations of the contracting parties.

**7826**

In the Panhandle case (Opinion No. 269) the Commission held that "ultimate public interest will be better served by permitting the pipe-line company to receive for the gas which it produces a price reflecting the weighted average arm's length payments for natural gas in the fields (and sometimes from the same wells) where it is produced than through the application of the 'rate base' method to this commodity."

Although price determination as effected in Panhandle was somewhat different than the approach to price determination made by the Staff here, reference is made to Panhandle in this decision among other reasons because of Mississippi's reliance upon the principles of that case and to point out, in addition, that Mississippi does not contend that the "rate base" approach to Union's production should be applied here. Reference is also made to the Panhandle case because Mississippi's statements in reference thereto

demonstrate that it has accepted the basic principle of Panhandle, namely "that gas produced by a natural gas company had the same value as a commodity at the well-head as gas purchased by an independent producer, and that such value should be attributed to it in determining the rate to which the natural gas company was entitled for sales at distant point."[38] This principle which Mississippi has urged as being correct and which should be accepted here



is applicable not only to pipe-line companies which produce their own gas, but to pipe-line companies which obtain gas from an affiliate with which it is under common control.

It appears that both Mississippi and the Staff accept the proposition that gas produced by a pipe-line company should be valued in analagous circumstances at the same price as gas obtained at competitive levels from independent producers. Moreover it appears despite protestations to the contrary that when Mississippi's contention are subjected to analysis, its basic complaint is not that the principles of Panhandle should not be applied here but that the manner in which those principles were applied in these proceedings was improper, i.e., only the specific approach made in Panhandle (Opinion No. 269) may be used. The method of valuing gas employed in Panhandle if applied here would not serve to reduce cost of gas purchased and thus to reduce rates to Mississippi and consequently its objections on this score as to cost of gas purchased are without merit.

The Presiding Examiner finds that cost of gas for the test period was $89,218,255.00.

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[38] See *In the Matter of El Paso Natural Gas Company*, Opinion No. 278, (mimeo ed. p. 5).

**7828**

RATE BASE

"For the most part Mississippi's attack" on the case presented was directed to "(1) the cost of purchased gas used; (2) the applicability of the test year 1952, adjusted; and (3) the 'rolled-in' basis upon which the Staff's cost allocation determined the same price of gas to be charged by United to Mississippi under United's PL-2 and PL-3 rate schedules".[39]

The Presiding Examiner has found that calendar year 1952, adjusted for known causes was a lawful and proper test period and that the cost of purchased gas to United for the test period was $89,255,218. The problems relating to the allocation of United's cost of service and form of rate to Mississippi will be dealt with hereinafter.

The principal direct attack which can be said to have been made by Mississippi regarding the amount arrived at in the Staff's evidence concerning United's rate base stemmed from Mississippi's claims that calendar year 1952, as adjusted, was not a proper test period. It may be observed, in passing, that the acceptance of 1953 figures as prepared by United concerning rate base would not have resulted in lowering the rate base and the failure to employ 1953 data relating to rate base was not prejudicial to Mississippi.[40]

**7829**

The effect of Commission Opinion No. 277 and accompanying order and the Commission's order of December 2, 1954 was to require proof with regard to all material elements necessary to sustain any rate finally reached as fair,

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[39] Mississippi's brief, p. 72.

[40] Total net rate base investment in excluded Exhibit No. 99 for identification was claimed by United to be $320,395,413.00 and return was claimed at 6¾% i.e., $21,626,690.00.

just, and reasonable for Mississippi including, among other things, proof regarding rate base.

Evidence regarding rate base was presented principally by Staff witnesses Luttring and Rainwater.[41] Evidence concerning rate of return was presented by Staff witness Goubleman.[42] United contended, comparatively early in the proceeding, that it was entitled to a higher rate of return than 6%, the rate claimed by the Staff to be just and reasonable.

The evidence with regard to rate of return as presented by the Staff has persuaded the Presiding Examiner that a 6% rate of return is a fair and reasonable rate of return for United. Such proof will be discussed hereinafter.

Staff witness Luttring sponsored Exhibit No. 77-A entitled "Federal Power Commission—United Gas Pipe Line Company—Docket No. G-1142—Rate Base Investment and Annual Return, Year 1952." This exhibit together with the testimony of Staff witnesses reflects the results of an intensive investigation and study of United's books, records and facilities. The exhibit also reflects an annual return at



6% for United. Schedules which are part of Exhibit No. 77-A show United's rate base investment by districts, by areas, and by functions for year 1952, adjusted.[43]

Schedule 1 of Exhibit 77-A shows the amount claimed as net rate base investment by United in an application filed on June 24, 1952, in Docket No. G-2210 and the amount which the Staff after investigation and consideration considered to be correct together with references to various schedules which explained the reasons for the differences between

[41] Rate base figures are contained in Exs. 77 and 77-A prepared by the Staff.

[42] Exhibit 81 sponsored by Staff witness Goubleman.

[43] e.g., Schedules 2 and 3, Exhibit No. 77-A.

the Staff's figures and those of United. Schedule 1 of Exhibit No. 77-A is as follows:

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UNITED GAS PIPE LINE COMPANY

## RATE BASE INVESTMENT AND ANNUAL RETURN

| *Particulars* | | Year 1952 *Per Company Schedule I Page 1 of 2 (Note 1)* | *Per F.P.C. Staff* | *Differences Under (Over) Company* | *References To Differences* |
|---|---|---|---|---|---|
| Gas Plant In Service | | | | | |
| Gross Plant | Schedule 2 | $346,054,658.00 | $341,772,658.00 | $ 4,282,000.00 | Schedule 6 |
| Depreciation Reserve | Schedule 2 | 55,128,711.00 | 56,067,105.00 | (938,394.00) | Schedule 7 |
| Net Plant | | $290,925,947.00 | $285,705,553.00 | $ 5,220,394.00 | |
| Contribution In Aid of Construction | Schedule 2 | 324,303.00 | 324,303.00 | ..... | |
| TOTAL | | $290,601,644.00 | $285,381,250.00 | $ 5,220,394.00 | |
| Working Capital | Schedule 3 | 6,858,801.00 | 5,102,478.00 | 1,756,323.00 | Schedule 8 |
| TOTAL | | $297,460,445.00 | $290,483,728.00 | $ 6,976,717.00 | |
| Working Capital Provided From 75% of Federal Income Taxes | Note 2 | ..... | 5,102,478.00 | 5,102,478.00 | |
| TOTAL | | $297,460,445.00 | $285,381,250.00 | $12,079,195.00 | |
| Account 100.5 Gas Plant Acquisition Adjustments | Schedules 4 and 5 | 15,307,372.00 | 6,024,819.00 | 9,282,553.00 | Schedule 9 |
| TOTAL RATE BASE INVESTMENT AND RETURN | | $312,767,817.00 | $291,406,069.00 | $21,361,748.00 | |
| Annual Return: | | | | | Schedule 10 |
| Company | @ 6¾ % | $ 21,111,828.00 | | | |
| Staff | @ 6% | | $ 17,484,364.00 | | |

Note (1) Schedule I referred to herein is shown in application dated June 15, 1953 and filed with the Commission on June 24, 1953.

(2) Schedule H in application filed June 24, 1953 shows Federal Income Taxes computed by Company in the sum of $13,189,843. Working capital supplied from this source would make allowance for working capital unnecessary.

It will be observed that the figures presented by the Staff witnesses shrink United's total rate base investment for the test period from $312,767,817.00 to $291,406,069.00, a reduction of more than 21 million dollars; and reduce the amount of annual return from $21,111,828.00 to $17,484,364.00.

The differences between the claims of United, regarding rate base as asserted in its filings and the amounts which the Staff claimed were just and reasonable are largely explained in Schedules 6, 7, 8, and 9 of Exhibit No. 77-A.

The differences may be summarized as follows:

(1) The Gas Plant in Service, Gross Plant, as shown by the company in its application in Docket G-2210 included an item to cover the construction of certain facilities to provide additional service of natural gas in United's northern area. United filed an application for a certificate of public convenience and necessity in Docket No. G-1951 to obtain authorization for such construction. The Commission found that United's case was insufficient to grant such certificate. The cost of such facilities was $4,282,000. This amount was deducted from United's cost of service presentation and the Staff recommended its exclusion from United's rate base. It is the Commission's policy not to include in rate base determination uncertificated facilities (Exhibit No. 77-A, Schedule 6).



(2) The Depreciation Reserve as presented in United's filing amounted to $55,128,711. The Staff recommended an increase in the depreciation reserve by $938,394. The latter figure was arrived at as follows:

Schedule A of the application filed June 24, 1953 in Docket G-2210 showed the following amounts claimed for annual depreciation expense for the year 1952:

| | |
|---|---|
| Depreciation per books | $8,905,293 |
| Adjustment for rate purposes | 2,199,055 |
| | $11,104,348 |

The accrued depreciation amounting to $55,128,711 used for rate purposes by United failed to consider the adjustment to annual depreciation expense in the sum of $2,199,055 after adjustment of $322,268, ($322,268 is arrived at by deducting $150,382 in depreciation attributable to investment in uncertificated facilities subject of G-1951, and $171,886, a reduction attributable to change in depreciation rates assigned to offshore facilities, i.e., a total of $322,268) leaving a total of $1,876,788. Since the sum of $1,876,788 is provided in monthly amounts during the year 1952, the amount to be added to accrued depreciation for rate purposes should be ½ of $1,876,788 or $938,394 to reflect the simple average use of the plant (Exhibit No. 77-A, Schedule 7).

**7834**

(3) United represented that its working capital requirement was $6,858,801. If it had been considered proper to include working capital as part of the investment in United the Staff would have supported a claim in the amount of $5,102,478 or $1,756,323 less than that set forth by United. The $1,756,323 was made up as follows:

(A) $1,113,565 represents an adjustment downwards made by the Staff in connection with United's Account No. 88. United's Account No. 88 relates to General Office Materials and Supplies. The amount claimed under this account was $4,211,820. Substantially all of the charges to this account represent purchases of pipe. This pipe was intended for use on new construction. Issues from account No. 88 were charged to Account 100.3, Construction Work in Progress. At December 31, 1952, a substantial amount of

the pipe charged to Account 100.3 had been closed to gas plant in service. Materials and Supplies of this character should have been carried as Construction Work in Progress. The Staff allowed $3,098,255, i.e., it recommended the reduction in this amount of $1,113,565.

(B) An additional amount of $642,758 was eliminated from United's claim concerning cash working capital. This figure was arrived at as follows:



United included in the items used for determining cash working capital, royalties and hydrocarbons extracted, which are paid after collection of revenues from sale of products in the sum of $5,097,077. In addition, United included as expenses in determining cash working capital operating expenses of $44,987 for operation of facilities to connect Phillips Block No. 28, an uncertificated facility.

The total of these two items is $5,142,064.00. If the claim for working capital had been supported, it would have been on a basis of 12½% of these items which amounts to $642,758.

No part of the working capital requirements as claimed by United, however, was included. According to staff witnesses, working capital sufficient for the company's operations can be provided from 75% of Federal Income Taxes. (Exhibit 77-A, Schedule 8)

(4) Account 100.5 Gas Plant Acquisition Adjustments.

The Company claimed as net investment in utility plant an excess over original cost (Account 100.5, Gas Plant Acquisition adjustments) in the amount of $15,307,372, whereas the staff included



for this item an amount of $6,024,819, which is a reduction of $9,282,553.00.

The Company's claim was based on including in the rate base the average of the beginning and ending book balances in Account 100.5, less the amortization reserve applicable thereto, for the year 1952. Since January 1, 1948, the Company has been amortizing its investment in gas plant acquisition adjustments (Account 100.5) over a period of fifteen years, ending with the year 1962 pursuant to the Commission's Order dated December 16, 1947. In accordance with this Order the Company had reduced the investment classified in Account 100.5 from $21,773,888 to $15,967,518 at January 1, 1952. Through application of monthly amortization accounts the latter amount was reduced to $14,647,226 at December 31, 1952. The amount of $15,307,372 by the Company in the rate base was compiled by averaging the net balances of $15,967,518 and $14,647,226.

Under the Company's approach claim was made for allowance in the rate base of the recorded amounts for gas plant acquisition adjustments; however, a Company witness testified that the recorded amounts represented what remained on the books from substantially larger sums, the Company having written off a portion of the initial investment in 1947. The purport of the testimony of the witness was that the Company could have claimed a larger investment, had it chosen to do so.

**7837**

The approach of the Staff to this problem was first to consider the amounts initially invested by the Company and its predecessors, which occurred during the years 1928 through 1931, through *arm's length transactions.* The amounts determined to have been legitimately invested at dates of acquisition aggregated $24,233,094. After eliminating the amounts applicable to the Wichita Falls properties that were disposed of during 1952, the total to be considered in the rate base was reduced to $19,067,460.53. The

Staff then proceeded to compute an amortization reserve requirement for the year 1952 applicable to each property acquisition on a straight-line basis using a life cycle beginning with actual date of original acquisition and ending in 1962, as of which date the Company is required by Commission Order to have completely amortized the cost. This computation had the effect of spreading the amortization of the Company's investment over a period of approximately 33 years with annual amortization charges of $573,792 as compared with Company's book accrual for 1952 of $1,320,292; moreover, the Staff's method increased the reserve requirement at January 1, 1952 from the book balance of $5,806,370 to $12,755,745, thus reducing the amount to be included in the rate base from $15,967,518, claimed by the Company, to $6,311,715.



The Staff witness who made this study testified that he had had supervision over the Staff's original cost investigation of the Company's property made in 1947 and thus had intimate knowledge as to the appropriate amounts to be included as arm's length costs in Account 100.5. He further testified that in his opinion the only equitable way to treat the costs in the rate base and in the cost of service was to spread them over the entire period of use of the facilities, namely, from dates of acquisition through 1962. While the Staff witness did not make an independent investigation to determine the consumer benefits resulting from the various acquisitions, he stated that he relied upon a study made by a Company witness who testified as to various rate reductions and other public benefits of integrating the acquired facilities with other properties.

Under the specific circumstances of this case, the Examiner finds that it is appropriate to allow for gas plant

acquisition adjustments (Account 100.5) in the rate base the amount of $6,024,819 as determined by the Staff.

(5) The difference in Return Allowance of $3,627,464.00 is based upon the lesser rate base and lower rate of return recommended by the Staff.

**7839**

For the purposes of this proceeding, United has chosen not to challenge figures as to rate base as presented by the Staff. Mississippi has offered no evidence to controvert that presented by Staff witnesses, nor does it appear to contend that Staff's figures are incorrect.

The Presiding Examiner finds that the proper rate base upon which United is entitled to earn a fair rate of return is $291,406,069.00.

**7840**

RATE OF RETURN

The standards and principles applicable to determination of a fair rate of return are authoritatively stated in the Bluefield [44] and Hope Natural Gas Company [45] cases.

In the Bluefield case the Supreme Court said:

> "A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or specula-

[44] *Bluefield Water Works and Improvement Company* v. *Public Service Commission of West Virginia*, 262 U.S. 679, 692.

[45] *F.P.C.* v. *Hope Natural Gas Company*, 320 U.S. 591, 603.

tive ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate under efficient and economical management to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions generally."

The Supreme Court in the Hope case said:

"From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. Cf. Chicago & Grand Truck Ry. Co. v. Wellman, 143, U.S. 339, 345-346. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return moreover should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credits and attract capital. See Missouri ex rel. Southwestern Bell Tel. Co. v. Public Service Commission, 262 U.S. 276, 291 (Mr. Justice Brandeis concurring).

**7841**

In *State Corp. Comm'n of Kansas* v. *Federal Power Commission,* 206 F. 2d 690, 721, the Court of Appeals pointed out:

"* * * that the rate of return, from the point of view of the investor, must be sufficient to assure a proper return to the investor and to maintain the company credit and to attract capital * * *.

"That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital."

United, through Samuel Joseph, an expert witness, presented testimony on March 25, 1953, regarding rate of return. This witness prepared a rate of return study and testified that in his opinion an "overall fair rate of return for United" was 6½%.[46]

Testimony regarding rate of return was offered by Staff witness Goubleman, who prepared Exhibit No. 81, a rate of return study relating to United, dated June, 1954. This exhibit was received without objection.

The witness concluded on the basis of his study that 6% was a fair rate of return to United.

The witness' study includes consideration of United's capital structure, capital ratios and its overall cost of both debt and equity capital as well as detailed information and comprehensive statistics covering the financial markets to determine investor requirements of return and yield on both debt securities and equity securities. In addition, Exhibit No. 81 includes information on bond yields and earn-



ings price ratios. The record also contains evidence concerning United's tremendous recoverable reserve, its highly diversified and increasing markets and its very favorable position in the gas industry—factors which tend to reduce materially business risks in the enterprise.

The record contains recent and pertinent information which has a bearing on fair rate of return for United which became available by reason of the marketing of debt securi-

[46] Subsequent thereto United and all customers, except Mississippi, agreed to a disposition of the issues which in essence embodied a 6% rate of return.

ties of United Gas Corporation (United's parent) in 1952 and 1953 and the sale of Electric Bond and Share Company, through underwriters, of a fairly substantial block of United Gas Corporation common stock in December 1953.

United Gas Corporation is subject to the Public Utility Holding Company Act of 1935 and its securities issues are subject to regulation by the Securities and Exchange Commission. United Gas Corporation holds all of United's outstanding securities.

United's capital structure and capital ratios at the end of 1952 and 1953 were as follows:

| | *12/31/52* (*000*) | | *12/31/53* (*000*) | |
|---|---|---|---|---|
| Long-Term Debt | $213,328 | 66.4% | $219,599 | 64.6% |
| Common Stock & Surplus: | | | | |
| Common Stock | 98,000 | | 108,000 | |
| Surplus | 10,062 | 33.6 | 12,158 | 35.4 |
| Total Capital | | 100.0% | | 100.0% |

The record shows that the foregoing ratios are comparable with those for eight natural gas companies having common stocks traded on an



exchange [47] as well as with capital ratios of six other natural gas companies having common stock traded over the counter,[48] as shown by the following:

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[47] Consolidated Gas Utilities Corporation, El Paso Natural Gas Company, Lone Star Gas Company, Mississippi River Fuel Corporation, Mountain Fuel Supply Company, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company and Southern Natural Gas Company.

[48] Colorado Interstate Gas Company, Tennessee Gas Transmission Company, Texas Eastern Transmission Corporation, Texas Gas Transmission Corporation, Texas Illinois Natural Gas Pipeline Company, and Transcontinental Gas Pipe Line Corporation.

| | Eight Listed Companies | | | Six Unlisted Companies | | |
|---|---|---|---|---|---|---|
| Date | Debt | Preferred | Common Equity | Debt | Preferred | Common Equity |
| 12/31/52 | 60% | 5% | 39% | 66% | 12% | 22% |
| 12/31/53 | 59 | 8 | 33 | 66 | 13 | 21 |

All of United's outstanding securities, both equity and debt, were issued upon receiving Securities and Exchange Commission approval and are held by United Gas Corporation. Analysis of United Gas Corporation's outstanding debt securities show that the cost of debt money to United Gas is 3.44%. The outstanding bonds of United Gas are rated "A" and its debentures are rated "Baa" by Moody's Service. Standard & Poor's Bond Guide for March 1935 shows that at the end of February 1955, the bonds were selling to yield between 2.90% and 3.25%; the debentures 3.48%.

Exhibit No. 81 shows that since 1945 some 33 issues of debt securities rated "A" and "Baa" by Moody's have been sold publicly by natural gas companies at an average cost of 3.44%, and during the first six months of 1954 such issues averaged 3.39%.

**7844**

In view of these facts and the other record facts herein the Presiding Examiner finds that a proper rate to assign to United's debt is 3.44%, which represents the cost of debt money to United's parent, United Gas Corporation.

Market quotations not being available for United's common stock, it is necessary and appropriate to consider investors' requirements in common stock of natural gas companies engaged in the transportation and sale of natural gas and in the common stock of United Gas Corporation.[49]

We have discussed United's vast operations and business hereinabove, the relationship of United and Union to United

[49] *Cf. Natural Gas Pipeline Co.*, Docket No. G-2302, order issued April 1, 1955.

Gas, the large and extensive market which United serves, its tremendous reserves, and its highly diversified and expanding markets. It appears that United's highly favored position in the gas industry tends to reduce investment risk in the enterprise.

We now turn to a consideration of earnings-price ratios for United vis-a-vis other natural gas companies.

The averages of the monthly earnings-price ratios for the eight natural gas companies having their common stocks listed on an exchange and for the six natural gas companies having unlisted common stock and for United Gas Corporation for the years 1948 through June 1954 are as follows:



| | Earnings-Price Ratios | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 1948 | 1949 | 1950 | 1951 | 1952 | 1953 | 1954 | Average |
| The Eight listed Companies | 9.0% | 8.5% | 7.4% | 7.0% | 6.2% | 7.0% | 6.9% | 7.4% |
| The Six unlisted Companies | N.A. | 7.6 | 7.4 | 8.9 | 7.3 | 6.8 | 6.7 | 7.5 |
| United Gas Corporation | 8.4 | 8.8 | 8.1. | 7.2 | 5.5 | 6.6 | 6.8 | 7.3 |

The Staff contends that a 6% rate of return should be applied here, pointing out that such return is sufficiently in excess of the cost of capital as "to attract additional capital as required on most favorable terms". It is urged that 6% will meet lawful standards as defined by *Federal Power Commission* v. *Hope Natural Gas Company* (supra).

A 6% rate of return would allow United a rate of 10.68% on common equity.[50]

It may be said that while the Commission has avoided an inflexible formula in arriving at rate of return, the cost of capital type of evidence has been given very heavy weight

[50] Debt 64.6% at 3.44% equals 2.22%
Common Equity 35.4% at 10.68% equals 3.78
6.00%

in its findings and orders. In general, rate of return is compensation for interest, risk, and the costs connected with marketing securities and raising capital. In ultimate analysis, the percentage represented by rate of return is a matter of judgment and the level at which such rate should be placed is an amount which will yield a reasonable annual return to those who have capital invested in the enterprise.

The Presiding Examiner finds that a rate of return of 6% on the rate base of $291,406,069, i.e., $17,484,364, is a fair, just, and reasonable return to United.

**7846**

It has been pointed out that United has not adopted the Staff witness' testimony regarding rate of return or Exhibit No. 81.

It does not follow from this that United is not entitled to have a fair rate of return on its rate base. In Docket No. G-1142 the Staff is charged with the duty to investigate United's operations and to establish fair and reasonable rates, if the rates extant were not fair and reasonable. To carry out the duties imposed upon it, the Staff made a study of a proper rate of return for United. The Commission, the Presiding Examiner, and all parties are entitled to the benefits of the Staff's investigation of United in Docket No. G-1142. This investigation necessarily involved consideration of a fair rate of return for United.

It would be unlawful to deprive any natural gas company subject to the Commission's jurisdiction of a fair rate of return, and the suggestion that United not receive such return because it did not adopt the Staff witness' testimony regarding rate of return is without merit.

*United's Cost of Service*

The principal Staff witnesses who testified concerning United's cost of service were Luttring and Epperson and

their qualifications have not been put in issue. It may be noted that such dispute as exists between Mississippi on one hand and United and the Staff on the other hand, insofar as overall cost of service for United is concerned, has centered principally on two issues, namely, test period and cost of gas purchased. Both issues have been the subject of extended discussion hereinabove and the Presiding Examiner has made findings regarding such matters.

**7847**

Various exhibits prepared by Luttring and Epperson and witnesses for United relating to cost of gas purchased have been received in evidence. In addition, Exhibit No. 77-B, an exhibit prepared by Luttring, was received in evidence. Exhibit No. 77-B is a study of United's cost of service by areas and system-wide, including return at 6% for the year 1952, as adjusted.

Schedule 1 of Exhibit No. 77-B shows the cost of service system-wide which the Staff contends is lawful and proper in the first column, and the cost of service in the second column as claimed by United in its filing which was suspended in part in Docket No. G-2210 made on June 24, 1953. The third column shows the difference between the Staff's and United's figures and the last column contains references to various schedules supporting the various items in the Staff's cost of service statement.

The cost of service statement is broken down to show the account classifications adopted in the Commission's code of accounts.

Schedule 1 of Exhibit 77-B is as follows:

**7848**

UNITED GAS PIPE LINE COMPANY

## COST OF SERVICE—SYSTEM WIDE INCLUDING RETURN AT 6% YEAR 1952 ADJUSTED

| | F.P.C. Staff (See Note A) (Schedule 2) | Company Schedule J (See Note B) | Differences Company Over (Under) | Reference To Differences |
|---|---|---|---|---|
| Purchase Gas | $ 89,218,255.00 | $ 92,424,198.00 | $ 3,205,943.00 | Schedule 3 |
| Operating Expenses | | | | |
| Natural Gas Gathering | 1,330,144.08 | 1,287,122.00 | ( 43,022.00) | |
| Products Extraction | 6,534,174.90 | 6,506,806.00 | ( 27,369.00) | |
| Transmission | 7,053,537.33 | 6,910,253.00 | (143,284.00) | |
| Distribution | 543,056.56 | 526,176.00 | ( 16,881.00) | |
| Customers' Accounting and Collecting | 346,344.52 | 339,013.00 | ( 7,332.00) | |
| Sales Promotion | 643,031.22 | 637,613.00 | ( 5,418.00) | |
| Administrative and General | 5,097,239.45 | 4,915,308.00 | (181,931.00) | |
| Total | $21,547,528.06 | $ 21,122,291.00 | $ (425,237.00) | Schedule 4 |
| Other Gas Revenues | (1,094,181.12) | (1,094,181.00) | | |
| Depreciation | 10,782,080.29 | 11,104,348.00 | 322,268.00 | Schedule 5 |
| Amortization of Gas Plant Acquisition Adjustment | 573,792.00 | 1,320,292.00 | 746,500.00 | Schedule 6 |
| Taxes: | | | | |
| Other | 6,235,605.00 | 6,435,718.00 | 200,113.00 | |
| State Income | 200,000.00 | 345,956.00 | 145,956.00 | Schedule 7 |
| Federal Income | 6,998,986.00 | 13,189,843.00 | 6,190,857.00 | Schedule 8 |
| Return Allowance | 17,484,364.00 | 21,111,828.00 | 3,627,464.00 | See Exhibit 77A Schedule 10 |
| Total | $151,946,429.23 | $165,960,293.00 | $14,013,864.00 | |
| Sales of Products Extracted | ( 8,317,524.00) | (8,317,524.00) | | |
| Total Cost of Service | $143,628,905.23 | $157,642,769.00 | $14,013,864.00 | |

A. Operating expenses reflected by staff includes adjustment for wage increase effective August 1, 1953.

B. Schedule J is reflected in application filed June 24, 1953 under Docket No. G-2210.

**7849**

A "breakdown" of United's costs for its Southern and Northern areas is included in Exhibit No. 77-B. A "breakdown" of the Southern and Northern area costs by oper-

ating districts was supplied to Commission engineers for use in allocation of costs. Exhibit No. 78-A reflects this breakdown.

The total cost of service for United during the test period according to the Staff was $143,628,905.23. The adjustments proposed by the Staff, if accepted as correct, will result in reducing the claims made by United in its filing in Docket No. G-2210 by $14,013,864.

The largest adjustments in cost of service recommended by the Staff relate to purchased gas expense, depreciation, amortization of gas plant acquisition adjustment, taxes, and return allowance. In addition an adjustment was recommended by the Staff to reflect for the full year a wage increase granted by United on August 1, 1953.

Exhibit No. 77-B, Schedule 3, sets forth the reasons as testified to by Staff witness Luttring for reducing the amount of purchased gas expense claimed by United by $3,205,943.

This difference is due principally to the use of estimated prices by the Company which subsquently proved in excess of the actual prices paid for anticipated new supplies.

Purchased gas costs determined by the Staff for the year 1952 are based on actual contract prices in June 1954 which were applied to the volumes estimated to reflect the adjusted or normalized gas requirements for the year 1952.[51]



It may be observed that in the cost of purchased gas there may have been included $33,000 representing price increases made after December 31, 1953.[52] If the $33,000 were disal-

[51] Exhibit No. 77-B, Schedule 3.

[52] Exhibit Nos. 82-88 indicate that the prices for cost of gas purchased were as of December 31, 1953. However, the testimony of the witness Luttring indicates the possibility that $33,000 of additional costs was included for price increases after December 31, 1953.

lowed as part of United's cost of gas purchased, the amount is so small it would not affect the rates finally determined.

The cost of gas purchased was determined for the purposes of these proceedings on the basis of actual prices as at December 31, 1953. Mississippi's brief (page 12) pointed out that "Actually most of the Staff's purchased gas costs are based on the results of 1953 operations (Exhibit Nos. 83, 84, 84A, 84B, 85, 85A, 85B, 86, 86A, 87 and 88)."

Schedule 4 of Exhibit No. 77-B relates to an adjustment for a wage increase granted by United on August 1, 1953, resulting in an increase in operating expenses applicable to the test period amounting to $425,237.

Schedule 5 of Exhibit No. 77-B explains a decrease in the sum of $322,268 in depreciation expenses recommended by the Staff. This decrease is based upon (1) a recommended removal from investment of proposed facilities to connect Phillips' Block 28 to Kent Bayou junction and (2) a recommended reduction from 10.00% to 6.64% in depreciation rates assigned to certain off-shore facilities.

Schedule 6 of Exhibit 77-B relates to the differences between the Staff and United regarding Amortization of Gas Plant Acquisition

**7851**

Adjustment, Account 100.5.

As previously discussed in connection with the rate base, the Staff made a study of the Company's legitimate investment in excess of original cost (Account 100.5) applicable to acquired properties and included in the rate base $6,024,819. In arriving at this amount a reserve requirement as of 1952 was computed using lives from dates of acquisition to 1962 of approximaely 33 years on the average. On this basis the annual amortization provision was found to be $573,792.

As has been found, *supra,* it is appropriate under the

special circumstances of this case to include in the rate base the remaining legitimate net investment of $6,024,819. Likewise it is proper to include in the cost of service the annual amortization provision of $573,792.

The Staff supported a claim for $200,000 for State income taxes rather than the $345,956 claimed in United's June 24, 1953 filing. The difference was due to United's claim of a higher investment in gas plant acquisition adjustments than that recommended by the Staff as proper, United's claim of annual amortization of gas plant acquisition adjustments being $746,500 in excess of that recommended by the Staff, United's claim of return allowance at the rate of 6¾% while the Staff recommended 6%, United's claims as to working capital, and United's claimed investment in unauthorized facilities. All of these claims had an effect on the net taxable income—the higher the income, the higher the tax. The recommended changes if accepted as correct will reduce the amount of State income tax by $145,956 (Exhibit No. 77-B, Schedule 7).

**7852**

United in its filing in Docket No. G-2210 set forth a claim for Federal income taxes in the amount of $21,111,828. The amount properly payable for Federal income taxes is, of course, affected by all the elements referred to in Schedule 7 of Exhibit No. 77-B. The Staff has recommended a reduction of $6,190,857 in the amount allowed for Federal income taxes for the reasons mentioned and because of the reduced income available, assuming a 6% return on investment rate base instead of a 6¾% return, giving due effect to a consolidated tax return.

We have considered reduction in return an allowance heretofore.

The facts regarding cost of service as presented by the Staff have not been rebutted by any evidence produced by Mississippi. The difference between the conclusions reached

by the parties is due primarily to a conflict regarding the law applicable to the facts presented. The Presiding Examiner finds that United's total cost of service for the test period was $143,628,905.23.

The Presiding Examiner also finds that United's cost of service as shown in column 1 of Exhibit No. 77-B correctly reflects the elements resulting in the total cost of service of $143,628,905.23.

*Cost Allocation*

A cost of service study was presented in Exhibit No. 77-B which has been discussed hereinabove together with the testimony relating thereto. This cost of service study was developed by districts, by areas, by zones and system-wide.

Evidence regarding cost allocation was presented by Staff witness Stockwell who sponsored Exhibit No. 78-A, a cost allocation study.



His testimony and the exhibit sponsored by him were adopted by United.

Sheet No. 1, lines 1 to 11 of Exhibit No. 78-A, is a summary of allocations for the following four cost areas which comprise the interconnected system of United, viz., (1) Southwest area; (2) New Orleans 5 and 6; (3) Central Rate Zone; and (4) Jackson District, exclusive of Northwest Mississippi.[53]

The four divisions used in this cost allocation represent four separate gas producing areas. The system as operated supports this area division.

Exhibit No. 78-A, in one sense, is actually four allocations which, when completed and summarized, represents

[53] Exhibit No. 78-A excludes cost areas referred to as Wichita Falls and Northwest Mississippi since these two areas are not connected with the balance of the system.

the allocation of cost of service for the entire United system exclusive of Northwest Mississippi and Wichita Falls.[54]

United's Northern area consists of the Central Rate Zone and Jackson district, exclusive of Northwest Mississippi. Central Rate Zone includes United's Dallas, Shreveport, and Monroe operating districts. The Southern Area consists of Southwest Area and the New Orleans 5 and New Orleans 6 area.

The total cost of service of the entire system (excluding northwest Mississippi but including operating districts known as Dallas, Shreveport, Monroe, Jackson, San Antonio, Houston, Beaumont, Southwest



Louisiana, New Orleans 5 and 6 is $142,933,087 with related revenues of $134,051,924 for year 1952, adjusted, showing a deficit of $8,881,163.[55]

Exhibit No. 78-A, Sheet 1, lines 12 to 25, shows costs, revenues, and related data applying to sales for resale and transportation for others in the Northern area, i.e., Dallas, Shreveport, Monroe, and Jackson districts, exclusive of northwest Mississippi. The Northern Area shows a total cost of service for sales for resale and transportation for others of $74,412,222 and related revenues of $70,353,224, i.e., a deficiency of $4,058,998.

Sales in the Southern Area were intrastate during the test period, except for a few small sales in the northern part of Beaumont district, and these were not shown separately.

Exhibit No. 78-A, Sheet No. 2, shows a total cost of service in the Jackson district of $43,709,111 and related revenues of $45,588,676, i.e., an excess of $1,879,565.[56]

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[54] See Exhibit No. 78-A, Sheets 1 to 11, inclusive.

[55] Sheet 1, Exhibit No. 78-A .

[56] Sheets 3 to 7 of Exhibit No. 78-A contain data to support figures shown on Sheet 2.

Sheet No. 8 of Exhibit No. 78-A, among other things, contains a comparison of the cost of service with revenues in the Central Rate Zone, i.e., the Dallas, Shreveport and Monroe operating districts. Total cost of service shown is $49,176,619 and total related revenue shown is $39,989,327 or a deficiency of $9,187,292.[57].

**7855**

Sheet No. 15 of Exhibit 78-A shows a total cost of service of $9,284,693 and related revenues of $7,734,510 for United's operating districts designated as New Orleans 5 and New Orleans 6.[58]

Sheet No. 21 of Exhibit No. 78-A relates to United's Southwest area which includes the San Antonio, Houston, Beaumont and Southwest Louisiana operating districts and shows a total cost of service for this area of $40,762,664 and related revenues of $40,739,411.[59]

Exhibit No. 78-A includes an allocation of United's cost of service between jurisdictional and non-jurisdictional sales. Such allocation study also includes an allocation of the cost of service for each class of service in each zone.

Stockwell testified that his "allocation of costs to all groups follows the procedure and methods set out in Commission Opinion No. 225, Docket No. G-1384, Atlantic Seaboard and others . . ."[60]

The Staff's allocation methods and procedures are the subject of a general challenge by Mississippi, and accordingly such methods and procedures will be considered and discussed herein.

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[57] Sheets 9 to 14 of Exhibit No. 78-A contain supporting data related to Sheet No. 8.

[58] Sheets 16 to 20 of Exhibit No. 78-A contain data related to Sheet 15.

[59] Sheets 22 to 25 of Exhibit No. 78-A contain data related to Sheet 21.

[60] A study of Stockwell's testimony and Exhibit No. 78-A leads the Presiding Examiner to the conclusion that the allocation made here did in fact follow the procedures and methods set out in Commission Opinion No. 225.

Stockwell pointed out that pages 9 to 14 inclusive of Exhibit No. 78-A contained the allocation details relating to the Central Rate



Zone and were exempletive of "all problems and employs all the methods used in the cost allocation of the other groups as well as containing some special problems that are not found in other groups."

The witness testified in very considerable detail regarding the methods and allocation procedures which he employed. In making his allocations the witness testified that he distributed the cost of service to functional divisions, i.e., production (gathering) and transmission; and that such costs were then classified between demand and commodity. The classifications between such functions and the percentages allocated by the witness as between demand and commodity are wholly consistent with those approved by the Commission in recent opinions.[61] Following the aforesaid classification of costs, the witness allocated costs to each of the classes of jurisdictional and non-jurisdictional business according to system uses on peak and annual volumes during the test year. A comparison was then made between the cost of service and the revenues derived from each class of service to determine the responsibility of each class of service for any deficiencies or excess in revenues as compared with cost.

Generally speaking, the method employed by the Staff witness to reach a conclusion as to the burden which should be shared by customers, such as Mississippi, purchasing gas from United in the Central Rate

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[61] *Atlantic Seaboard Corp.*, Opinion No. 225 (Mimeo ed. pp. 17-26); *Northern Natural Gas Co.*, Opinion No. 228 (Mimeo ed. pp. 23-30); *Colorado Interstate Gas Co.*, Opinion No. 235 (Mimeo ed. pp. 58-73); *United Fuel Gas Co.*, Opinion No. 258 (Mimeo ed. pp. 34-45); *Panhandle Eastern Pipe Line Co.*, Opinion No. 269 (Mimeo ed. pp. 87-96); *El Paso Natural Gas Co.*, Opinion No. 278 (Mimeo ed. pp. 40-54).

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Zone was to take over-all cost of facilities, cost of purchased gas, and other major items of cost for such zone and then to allocate such costs to customers in the Central Rate Zone in accordance with the natural gas obtained from United in such zone on a commodity-demand basis without making individual calculations for each customer in such zone on the basis of the distance from the source of the gas, or on the basis of segregated facilities. However, in order to obtain a cost allocation for United's three transportation customers in the Central Rate Zone,[62] it was necessary, according to Stockwell, to make an allocation on a "weighted average" demand mile and commodity mile basis. The sole purpose of the witness in making an allocation on such basis was to ascertain the average cost of transportation service. The approach employed by the witness to allocate transportation costs (i.e., an approach involving measurement of the length of facilities and assumptions as to specific sources and destinations of gas) is wholly inapplicable to any other allocation or for any other purpose in this proceeding. In this connection, it may be pointed out that had it not been necessary to determine costs for United's three transportation customers, no study of any kind would have been made on a demand mile or commodity mile basis. This is shown by the fact that no such study was made for United's Jackson district, because no transportation service was rendered in that district, although sales were also made therein to pipe line company customers. It thus appears that the assumptions made by the witness in this allocation relating to specific facilities

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and sources were limited to the purposes to which this particular allocation was addressed, and that the only pur-

[62] Southern Natural Gas Company, Tennessee Gas Transmission Company and Texas Eastern Transmission Corporation.

pose of making assumptions concerning such facilities and sources was to accumulate the total demand miles and commodity miles in United's Central Rate Zone of all gas transmitted for any purpose so that costs allocable to the transportation customers could be determined on a mileage basis and separated from the total transportation costs.

Since the issuance of the Commission's opinion in Docket No. G-1447, 10 F.P.C. 35, Mississippi has been billed under two separate rate schedules, referred to following the filing of the conversion tariff as Rate Schedules PL-2 and PL-3.

The Staff contends, supported by United, that these two rate schedules should be abolished because they are unjust, unreasonable and discriminatory and that a singe "rolled-in" rate schedule for service to pipe line customers of United in the Central Rate Zone should be adopted in their stead.

The Staff's position which is supported by United is that (1) since United's properties are interconnected and are completely integrated and are used commonly for all customers there is no reason and no basis for allocating specific facilities, property or gas supplies to specific customers within a designated rate zone, and (2) since gas received by Mississippi is general system gas it should not be allocated into specific segments for use by specific customers. Moreover, the Staff contends that the gas received by Mississippi from United is not capable of identification as coming from any specific part of



United's extremely widespread sources of supply.

Based on these major premises counsel for the Staff, supported by United, urge the establishment of a rolled-in rate to be made applicable to deliveries to Mississippi and all other pipe line customers in the Central Rate Zone because all such pipe line customers are similarly situated,

and all should enjoy equal treatment in the form of uniform rates with special preferences or previleges for none.

Mississippi claims that a cost allocation based on specific facilities and specific sources of gas is the only lawful way to reach just and reasonable rates which could be made applicable to it, and it further asserts that such specific facilities and specifically identifiable gas are capable of separate admeasurement and further that "pursuant to the terms of its gas purchase contracts with United (which have not been abrogated in these proceedings) Mississippi has a positive preemptive right to deliveries of gas by United from these fields."[63]

The arguments made by Mississippi make clear that it considers that the facilities through which service was made to Mississippi prior to the construction of the G-1447 facilities are dedicated to deliveries made under Rate Schedule PL-3 and that the facilities authorized pursuant to Docket No. G-1447 are dedicated to deilveries made under Rate Schedule PL-2.

A reading of the Commission's opinion in Docket No. G-1447, 10 F.P.C. 35, particularly the parts thereof devoted to a discussion of the



purposes for which the facilities in question were being authorized, makes it exceedingly clear that the G-1447 facilities were constructed for general system purposes. The Commission's opinion is replete with references to the general objectives for which the facilities were being authorized and we have quoted the Commission on this matter hereinbefore.

The testimony presented in the instant proceedings has shown clearly that United operates a completely integrated natural gas system; that all of its gas resources both from non-affiliated producers and from Union form a common

[63] Mississippi's brief, p. 48. See also p. 52.

pool for all the customers of United's system. Dillingham, United's General Superintendent, who had thorough knowledge of United's operations, testified that prior to the receipt by Mississippi of gas from United, it was commingled and it was not possible to tell whether gas received by Mississippi came from the area of the Gulf Coast in Texas, or Carthage, or any other part of United's system.

United's G-1447 facilities are not dedicated solely to PL-2 deliveries; they are general system facilities, and Mississippi's contentions to the contrary are unfounded.

The problem whether the Staff's and United's contentions or whether Mississippi's conflicting contentions on this point should be sustained presents two questions, the first being whether the allocations contended for by Mississippi should be made as a matter of sound rate making practice and the second whether such allocations could validly be made in the light of the physical facts of United's operations.

United has hundreds of customers including approximately 200 jurisdictional customers. It is in this context that Mississippi contends



that United's rates as applied to it should be based on allocations of specific facilities, and a separation of United's gas sources into at least two segments, one of which should be allocated to Mississippi because it has preemptive rights to sources in certain fields.

It should be observed first that if Mississippi's theory is correct, namely, that allocations should be made based on specific use of utility property by a specific customer, then such an allocation should be made for each of United's jurisdictional customers.

It is quite obvious that it would be impracticable to attempt to make rates on an individual basis for each of the approximately 200 jurisdictional customers of United.

It has not been Commission practice to make allocations based on specific use of utility property by specific customers.[64]

Were the Commission to attempt to make rates on an individual basis for all of United's jurisdictional customers, the time consumed in conducting hearings in rate cases involving large pipe-line companies would be so lengthened that grave injustice would result. Fairness does not require an agency to attempt the impractical or to undertake a solution of rate making problems upon a basis which would make the proceedings so drawn out that injustice would be inevitable.

This is not to say that rates to individual customers are not entitled to reasonable consideration, but such consideration must be made



in relation to the operation of a utility as a whole and in relation to the service area, zone, and classification in which the customer finds himself. The method followed by the Staff in making cost allocations here was not unusual in any respect while that suggested by Mississippi is highly unusual.

Cost of service studies for specific customers have not been required by regulatory agencies in proceedings where a general revenue increase was sought except in extraordinary situations and there is nothing extraordinary about the situation under consideration here. The Illinois Supreme Court sustained the Illinois Commission in refusing to require such studies for a consideration of a rate increase even in a proceeding which involved specific rate schedules rather than a general revenue increase. *Produce Terminal Corp.* v. *Illinois Commerce Comm's,* 414 Ill. 582,

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[64] *Cf. In the Matters of Northern Natural Gas Company,* Opinion No. 268 (mimeo. ed. p. 29); *In the Matter of El Paso Natural Gas Company,* Opinion No. 278 (mimeo ed. p. 42, et seq.).

112 N.E. 2d 141 (1953). The Superior Court of Pennsylvania sustained the refusal of the Pennsylvania commission to require cost allocation studies under a statutory prohibition of unreasonable discrimination similar to Illinois. *City of Pittsburgh* v. *Pennsylvania Public* Utility Commission, 171 Pa. Super. 187, 90 A 2d 607, 621 (1952).

It may also be noted that "A cost of service study was requested of United" in Docket No. G-1447. "United contended that its system was so integrated that it was impossible for it to make a cost of service study for any particular customer."[65] United has never deviated from this position and the facts as developed show that United's contention was correct.

Mississippi, on the other hand, contends that "in view of its historical background and contract rights it is entitled to a continuance



of its present 'old' contract requirements at a separate lower rate to reflect the different source, cost and supply of this northeast Texas and northern Louisiana gas as contrasted to the source, cost and supply of United's 'new' Gulf Coast gas delivered via its newly certificated G-1447 facilities."[66]

Mississippi relies heavily on certain contracts which it entered into with predecessor companies of United which were supplemented and modified by later contracts entered into with United prior to the construction of the G-1447 facilities. Mississippi claims that it has a "positive preemptive right to deliveries of gas by United from these fields," referring specifically to Rodesso field in Cass County, Texas, and Caddo Parish, Louisiana, the Sugar Creek field in Webster Parish, Louisiana, and the Carthage field in Texas.

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[65] 10 FPC 35, p. 72.

[66] Mississippi's brief, p. 52.

Mississippi calls attention to a 1945 modification of certain earlier contracts which it had entered upon with predecessor companies of United (Item R, Supplement September 7, 1945, Article 6).[67] According to this modification Mississippi had the right to demand that United deliver such additional supplies of gas as Mississippi desired to buy—apparently without limitation as to amount. There is no reference in the amendment to specific fields and the general character of the demand which Mississippi claims it had the right to make upon United is indicative of an intention between the parties to assure availability of gas for Mississippi rather than to delineate specific sources from which the gas was to be obtained.



It may also be observed that if Mississippi really believed that the 1945 contract gave it additional or "preemptive" rights to "old" or "cheap" gas in the Carthage field of Texas, it seems rather odd that it supported United's application for a certificate in Docket No. G-1447 so that it could buy "new" or "high priced" gas instead.

The term "pre-emptive right" imports a right to the exclusion of others, i.e., Mississippi claims to have a preferred position above all other customers of United to specified resources of the latter.

If Mississippi ever had a preemptive right such as it claims, the exercise of such right should not be permitted because it would involve an unjust preference and would be discriminatory in its effect upon United's customers. A rate based upon a contract creating such a preemptive right would be against the public interest. On the facts in this case, the Presiding Examiner finds that two rates in the Central Rate Zone based on separate contracts for the

[67] Mississippi's brief, p. 67.

"old" and "new" gas would not be in the public interest and should not be continued.[68]

As Judge Cardozo put it in *Postal Telegraph-Cable Co.* v. *Associated Press,* 127 N.E. 256, 257:

> "I think the plaintiff cannot justify discrimination among customers by dividing contracts between new and old, and applying a different rate to each. The law says that under like conditions of service, charges shall be equal. . ."

The views expressed by Judge Cardozo were cited with approval by the Supreme Court in *ICC* v. *United States,* 289 U.S. 385, 389.

**7865**

In *State* v. *Mead Corporation,* 238 N.C. 451, 78 S.E. 2d 290, 298, the Supreme Court of North Carolina held that "The obligation of a public service corporation to serve impartially and without unjust discrimination is fundamental . . . There must be substantial differences in service or conditions to justify difference in rates. There must be no unreasonable discrimination between those receiving the same kind and degree of service. *Hoerner* v. *Oxford Water & Electric Co.,* 153 N.C. 535, 69 S.E. 607, *Postal Telegraph Cable Co.* v. *Associated Press,* 228 N.Y. 370, 127 N.E. 256."

To permit Mississippi to have two rates based allegedly on historical contract relationships between United and Mississippi without regard to the rights of other customers in the same class, receiving the same service, in the same rate zone would amount to unlawful discrimination against such customers.

Mississippi devoted several pages of its brief to a discus-

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[68] "Mississippi concedes [at p. 52 of its brief] that 'if after a proper proceeding the Commission found the contract rate to be against the public interest it could modify it or set it aside entirely' (215 F. 2d 885)."

sion of the Presiding Examiner's decision *In the Matter of Natural Gas Pipeline Company of America,* Docket No. G-1697, to support its claim to two separate rates in the instant proceeding but omitted any reference in its discussion of this matter to the order affirming with modifications the Presiding Examiner's decision in which the Commission explained that its determination in Natural Gas Pipeline was not to be considered a deviation from the principles enunciated *In the Matter of Trunkline Gas Supply Company,* Docket No. G-882, 8 FPC 250 (1949).

The Trunkline case involved an application for authority to construct facilities having a daily capacity of 250,000 Mcf and to deliver such volume of gas to Northern Natural Gas Company, and the Commission



applied a "rolled-in" rate in this proceeding. The Commission, in distinguishing the Natural Gas Pipeline case from the Trunkline case, pointed out that "the additional gas supply from Trunkline was to be made available to Northern *as a part of its general gas supply* which was proposed to be available to all of Northern's customers on the basis of their increased requirements" while "The only volume of gas purchased by Natural from Texas Illinois is the 81,822 Mcf which Natural buys for certain customers west of Joliet. Accordingly, it appears clear that our decision in the Trunkline case is in no way at variance with our decision here." [Underscoring supplied.]

It was abundantly established that United's additional gas resources and additional facilities authorized in Docket No. G-1447 were *general system facilities and supplies.* The Commission's decision in Natural Gas Pipeline Company of America lends support to the conclusion that the principles of Trunkline should be applied here and that an incremental rate should not be made applicable in this proceeding.

Mississippi in its brief quoted certain language employed in the decision of the Presiding Examiner who wrote the initial decision in Natural Gas Pipeline regarding the qualifications of a Staff witness who testified in that proceeding regarding rate form.[69] The same witness testified in the instant proceeding. This language was quoted by Mississippi apparently with two purposes in mind: (1) to persuade the Presiding Examiner here that its interpretation and analysis of the meaning to be attributed to the Natural Gas Pipeline case was correct and (2) to convince



the Presiding Examiner that the Staff witness in question was not properly qualified to testify.

The use of the quotation does not help Mississippi to achieve either purpose and tends to defeat both such purposes. In this connection it is noted that in its order affirming with modifications the decision of the Presiding Examner in the Natural Gas Pipeline Company case, the Commission struck the very language which Mississippi urged the Presiding Examiner here to consider apposite.

The Presiding Examiner has observed the witness in question, has carefully considered his qualifications, and is fully satisfied that the witness is highly qualified. His testimony will be discussed hereinafter.

Mississippi, in attempting to analogize Natural Gas Pipeline to the instant situation indicated that in Natural Gas the additional gas supply was completely commingled, but that here it was not.[70] The fact is that in this case, United's gas from all sources is commingled at Sterlington before delivery to Mississippi and to many other customers of United. In this connection, Dillingham, general superin-

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[69] Mississippi's brief, pp. 60, 61.

[70] Mississippi's brief, p. 60.

tendent of United's operations, testified that all deliveries of United's gas to Mississippi at Perryville are made through the same meter station. This metering station has seven meter tubes, all of which are connected to United's facilities at United's Sterlington compressor station. United's lines at Sterlington tie into all of United's sources of supply and United depends upon all of its sources of supply and all of its facilties in serving its customers in the Central Rate Zone, and no distinction between sources of supply is



made in serving customers in such zone. "Old" contract gas is not segregated or separated from "new" contract gas, but is commingled before delivery and any allocation based upon an assumption of separately delivered gas from separated sources is based on fiction, not fact.

United's separate billing under two rates, i.e., PL-2 and PL-3, was based on the circumstances that such rate schedules were put into effect pursuant to the Commission's decision in Docket No. G-1447, pending the outcome of the investigation in Docket No. G-1142 to determine whether United's rate structure required revision. The situation appears to have been that pending the outcome of the Commission's investigation, United and Mississippi, for metering and billing purposes, regarded the gas delivered to Mississippi as separate gas delivered from separate and different sources. The assumptions relating to separate billing having been established to be incorrect, separate billing should be discontinued.

Separate billing is not justified where gas is procured from various sources, is delivered through general system facilities, and is commingled prior to receipt. In such circumstances, an average cost should be assigned as recommended by the Staff and urged by United.

In Texas Gas, which is the case closest akin to the one at hand, insofar as the rolled-in rate principle is concerned, the Commission would not permit two rates for the same service, to the same customer at the same point of delivery (Texas Gas Transmission Corp., Opinion No. 232 (mimeo. ed. p. 62)). The principle of Texas Gas apply to Mississippi.

Having concluded as a matter of principle that a separate cost allocation for individual customers of the same class in the same rate zone receiving the same character of service should not be made, it may in one sense be a work of supererogation to consider whether a separate



cost allocation of this kind can be made for a specific customer. On the other hand, discussion of Mississippi's testimony on this phase of the matter may possibly afford clearer understanding of the errors inherent in its contentions.

In this case, Mississippi presented t[illegible]mony and a cost of service study which has been the subject of attack by United and the Staff on the ground that it is invalid both in its major premises and in detail.

As we have pointed out, Mississippi's proposed cost allocation was based on the theory that the cost of service to it should be determined by a "separate costing" of facilities and sources. In this connection, Mississippi contended that it could establish one allocation for gas purchased under United's present Rate Schedule PL-2 and another under the presently existing Rate Schedule PL-3.

In order to give functional application to the idea of a "separate costing" for each of the claimed separate and individual services represented by each rate schedule, it would be necessary in the case of each schedule to determine the cost of the specific gas to United and the specific facility through which it is transported.

Mississippi's cost of service study (Exhibit Nos. 96, 97 and 98) presented by its witness Maurer assumed that all gas purchased under Rate Schedule PL-2 was delivered over Line 129 (part of the G-1447 facilities) which originates in Agua Dulce in Texas.

The witness had no information regarding the cost of the specific gas which supplied Line 129, nor did he have in his possession knowledge of the actual cost of construction and operation of Line 129. In order to



establish valid costs on a "separate costing" or segregated basis such information was essential.

The witness conceded that he did not have available information concerning the actual cost of construction and operation of Line 129. In an effort to explain why he could not segregate facilities pertinent to deliveries through the G-1447 facilities, Maurer adverted to certain testimony of Staff witness Epperson, given in response to interrogation by counsel for Mississippi, to the effect that it was impossible from the Staff's working papers to identify various costs in the Shreveport, Monroe and Dallas districts based upon any portion of the G-1447 facilities. Mississippi apparently had not made any independent investigation of the cost of constructing Line 129 and thus it appeared Maurer could not determine the cost of constructing such line. Further, it does not appear that he had available segregated figures covering the cost of operating the line. In substitution for a separate determination of the cost of Line 129 facilities and gas supply in the Southern area from Agua Dulce to the southern border of United's Central Rate Zone, the witness used the average cost of gas in the entire Southern area delivered from United's transmission system in that area. This, of course, constitutes no "separate costing" of facilities or gas and is inconsistent with the principle of "sepa-

rate costing'' espoused by the witness. Moreover, it invloves acceptance of the principle of average cost.

It will also be noted that only 25% of the gas in the Southern area is transmitted through Line 129.[71] There is no evidence in the record



to support the assumption made by Maurer in this study that the unit cost of gas transported through Line 129 was the same as the average cost of gas in United's Southern area. Accordingly, the use of such average unit cost figures cannot be justified as costs attributable to gas piped through these facilities.

The next step in Maurer's allocation was to add to the aforementioned average costs the average cost of transmitting gas a distance of 169 miles, i.e., the distance[72] from the southern border of the Central Rate Zone to Perryville. This cost allocation was reached on a commodity mile and demand mile basis. Again it appeared that Maurer did not segregate facilities or cost but merely determined the average cost of haulage on a specific mileage basis. Thus at no point did the witness ever present an allocation based on segregated sources and facilities.

It will also be noted that the demand mile and commodity mile unit costs employed by Mississippi were those obtained from a determination applicable to average lines in the Central Rate Zone. Line 129 is a new, higher cost, 30-inch line, whereas average lines in the Central Rate Zone are not new and are smaller in size. Accordingly, the unit cost employed were erroneous.

Mississippi used one method to calculate costs for one part of Line 129 and a second method for another part of

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[71] Exhibit No. 78-A, Sheet 22.

[72] 169 miles is the length of the segment of Line 129 in the Central Rate Zone.

the very same line. Since the witness used average system cost without respect to distance in the Southern area of United's system and specific distances in the Northern



area of United's system one method is inconsistent with the other.

In addition, Mississippi used actual peak day volumes but normalized annual volumes in determining its PL-2 costs. As pointed out hereinbefore, the use of an actual peak different than normalized peak in conjunction with normalized volumes leads to results which have no validity.

There are other basic errors in Mississippi's study of PL-2 rates but enough has been noted to illustrate that Mississippi's cost of service for Rate Schedule PL-2 is not founded on sound principles and cannot be accepted as a basis for rate making.

In Maurer's determination of PL-3 rates, he assumed average costs in the Central Rate Zone (which he obtained from Exhibit No. 78-A) after deducting his claimed costs for PL-2 gas. This method of cost allocation for Rate Schedule PL-3 is inconsistent with Mississippi's basic theory regarding separate costing of facilities and sources. Moreover, the amount arrived at for PL-3 costs was tied to Mississippi's allocations in regard to Rate Schedule PL-2, which as has been noted is erroneous and the error is thus carried forward another step into Rate Schedule PL-3. There are other errors made in "Maurer's allocations" but enough has been noted to show that they are unsound.

Mississippi's approach to costs for service rendered to it by United is rejected.

The Presiding Examiner finds that the costs as allocated by the Staff's witnesses are founded on sound principles and are correct

Staff witness Crosby testified regarding rates applicable to the various classes of United's customers. His testimony related, among other things, to rates applicable to pipe-line companies in the Central Rate Zone, including Mississippi. Crosby's testimony is based on the assumption that the cost allocations reflected in Exhibit 78-A are correct.

The rates recommended by Crosby, if made applicable, would produce gross revenues to United for sales for resale in the Northern Area, based on the test year data of $74,552,116. These rates included a single uniform rolled-in rate consisting of a demand charge of 75¢ per Mcf per month and a commodity charge of 10¢ per Mcf applied to sales to pipe-line companies served from United's transmission system in the Central Rate Zone including Mississippi.

The evidence shows a cost of service in the Central and Jackson rate zones of $74,412,222. The witness' testimony shows that a single uniform rolled-in rate consisting of a demand charge of 75¢ per Mcf per month and a commodity charge of 10¢ per Mcf applied to United's pipe-line company customers together with other rates and charges would recover United's cost of service, including a fair return, based on the test year, as adjusted. The record also shows that the amount necessary to enable United to recover its cost of service for pipelines in the Central Rate Zone for the test period was $32,024,749.[73] Crosby's rates, however, provided for a recovery to United for pipe-line service in such

[73] Exhibit No. 78-A, Sheet 8, Col. 6, Line 21.

Zone of $31,829,867.[74] Accordingly, the amount which would be produced by a 75¢ and 10¢ rate applied to pipe-line companies in the Central Rate Zone would be somewhat less than United's costs for service to pipelines. Certainly, this is not unfair to Mississippi.

The rates as designed by the Staff witness would eliminate Rate Schedules PL-2, PL-3 and PL-4 for pipe-line companies in the Central Rate Zone and substitute a single uniform rate schedule. United renders only one service to pipelines in the Central Rate Zone from its transmission system at a uniform cost and only one rate should apply to such service. Uniformity is necessary here to eliminate discrimination.

The witness in establishing his proposed rates, including the rate recommended for Mississippi and other pipe-line customers similarly situated, followed Commission precedents.[75] These precedents have recently received Commission approbation.[76]

The rates designed by Crosby recognize past rate forms and practices of United, serve to simplify its rate structure, provide for uniformity, and eliminate discrimination.

Mississippi contends that the proposed rolled-in rate would have an adverse effect because of its impact on Mississippi's non-jurisdictional interruptible industrial sales in the St. Louis area.

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[74] Includes the field sale to Texas Gas Transmission which is at a 10¢ per Mcf rate which approximates allocated cost.

[75] *Cf., Texas Gas Transmission Corporation,* Opinion No. 232 (mimeo ed. p. 62); *Trunkline Gas Supply Company,* 8 FPC 250; *Northern Natural Gas Company,* Opinion No. 228 (mimeo. ed. p. 39).

[76] El Paso Natural Gas Company, Opinion No. 278 (mimeo ed. p. 55).

To illustrate this point, Mississippi presented a table in its brief[17] purporting to show that the 10¢ commodity rate advocated by the Staff, if put into effect, would increase its commodity costs $739,508 above those currently in effect. Mississippi's table sets forth that at a 10¢ commodity rate, its commodity costs would be $11,370,193. It then shows PL-3 commodity cost at 9¢ per Mcf amounting to $6,655,572, and a PL-2 commodity cost at 10¢ amounting to $3,975,113, totaling $10,630,685.

The fact is that at the present time Mississippi is paying a commodity rate of 12.5¢ on its PL-2 rate schedule. Accordingly, if the correct figures were applied to commodity rates on the PL-2 schedule they would total $4,968,891 instead of $3,975,113 as calculated by Mississippi. Thus, the total commodity costs as recommended by the Staff would be $254,270 less than that now in effect, instead of $739,508 more. Further, Exhibit 79 shows that a single uniform rolled-in rate will decrease United's rates and charges to Mississippi based upon the test period by $948,410 per annum compared to the rates currently effective under Rate Schedules PL-2 and PL-3.

Mississippi's contentions of possible loss of non-jurisdictional business if a 75¢ and 10¢ rate were put into effect are not supported by substantial evidence. When questioned as to the "peculiar effect on [his] company of a rolled-in rate", Mississippi's vice president indicated that he objected to the proposed rate "largely because of its potential adverse effect on our sales and our customers. . . ." When queried further as to the concern which he felt, he indicated the possibility

[17] Mississippi's Brief, p. 64.

that Mississippi might be adversely affected "If the rolled-in rate in terms of a minimum take were to prevail and our industrial business fell off, not because of price but simply because our industrial customers didn't need any fuel . . . we will say they themselves lost business and had no need for fuel or a minimum need for fuel." However, the witness when asked about the probability of such a development occurring stated that it was not reasonable to expect such development for the present time.

Mississippi's evidence as to being adversely affected by the Staff's proposed rates is lacking in specificity and conviction.

The Presiding Examiner finds that a single uniform rolled-in rate consisting of a demand charge of 75¢ per Mcf per month and a commodity charge of 10¢ per Mcf applied to sales to pipe-line companies served from United's transmission system in the Central Rate Zone, including Mississippi, is just, reasonable, and lawful and creates no undue discrimination against Mississippi.

*Tariff and Service Agreement Provisions*

Mississippi contends that two changes in the Rate Schedules and tariffs proposed to be made applicable to it are unwarranted. The rate schedule and tariff provisions eliminate a provision in a 1945 agreement which Mississippi has interpreted as requiring United to furnish unlimited quantities of gas upon its nomination at any time up to May 1, 1961. They also include a "take or pay for" minimum provision. This provision is contained in Mississippi's agreements with United pertaining to so-called PL-2 gas but not in the agreements pertaining to so-called PL-3 gas. As

Mississippi puts it, the changes proposed involve two questions:

> "(1) Whether United should have a continuing obligation to meet Mississippi's future requirements for gas, and
>
> "(2) Whether Mississippi should be required to 'take or pay for' a minimum of 72% of 'old' contract (PL-3) gas?"

The first question put is based upon the assumption that certain provisions of a 1945 contract between Mississippi and United gave Mississippi the right "to require United to supply its additional requirements, *whatever they may be*", (p. 68) until 1961. There is an implication in Mississippi's brief that United's 1945 contract required it to deliver to Mississippi unlimited quantites of "old" or "cheap" gas, although Mississippi has not made itself entirely clear on this point, and it may be that Mississippi's argument is simply to the effect that United is required to furnish gas to Mississippi up to any amount nominated without regard to source.

In any event, it has been pointed out that United operates an integrated system and the segregation of specific quantities of gas into "old" or "cheap" PL-3 gas and PL-2 or "new" or "higher priced" gas is infeasible, inconsistent with past Commission practice in similar cases, impracticable and inconsistent with the physical facts of United's operations.

In the second place, such private agreement between the parties is, of course, subject to the paramount provisions of the Act. United could not increase the amount of its delivery from any source to Mississippi to any specific quantity

which Mississippi might demand without obtaining Commission authorization pursuant to Section 7 of the Act.



Mississippi had no absolute right of the kind and character it contends that it had. In this connection, the Commission adopted certain rules and regulations relating in part to changes in contract provisions.[78] Section 154.15 of the Rules relating to rate schedules and tariffs provides that "Agreements intended to effect a change or revision of an executed service agreement shall be in the form of a superseding executed service agreement only. Service agreements shall not contain any supplements."

If the provisions of Mississippi's 1945 agreements mean what Mississippi claims they mean, such provisions would afford Mississippi a preferential right which would be discriminatory as respects United's other customers.

The Presiding Examiner finds that elimination of such provisions are not in violation of law but in conformity therewith.

The second question raised by Mississippi imports that it is being required to "take or pay for" a minimum of 72% of "old" contract gas. The question assumes that a differentiation should and can be made between "old" and "new" gas. The assumption is incorrect. Moreover, the objection to the inclusion of the clause is not based on any recent experience which would indicate a probability that such clause would have any adverse effect on Mississippi. In fact, Mississippi's vice president testified that this provision could affect Mississippi adversely if Mississippi's "interruptible" customers didn't need any fuel" but that he expected that the present prosperity would continue in the immediate

[78] Cf. Sections 154.63(2), 154.85, Part 154, Regulations under the Natural Gas Act.

future. Furthermore, there is no reason why the tariff provisions applicable to all other pipe-line companies in the Central Rate Zone should not be made applicable to Mississippi.

The Presiding Examiner finds that the inclusion of such "take or pay for" provision is lawful, just, and reasonable.

*The Proviso to Section 5(a) of the Act*

We now come to a consideration of the proviso to Section 5(a) of the Act. The proviso reads as follows:

> "That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company * * *."

Mississippi asserts that "Sections 4(e) and 5(a) deny the Commission power 'to order any increase in any rate contained in the currently effective schedule' of a natural gas company 'on file with the Commission unless such increase is in accordance with a new schedule filed by such natural gas company'. A rate in excess of 65¢ demand charge and a 9¢ commodity charge for PL-3 gas would be unlawful."

The uniform rolled-in rate recommended by the Staff will result in overall rates and charges lower than those currently in effect.

The provisions of Section 5(a), however, are to be literally construed,[79] and accordingly have an impact on United's PL-3 rate schedule currently applicable to Mississippi.

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[79] *Atlantic Seaboard Corp.*, Commission Opinion No. 225 (mimeo. ed. p. 40).

The proviso to Section 5(a) however would not preclude the Commission from eliminating existing unlawful discrimination, undue preference, and unreasonable rates.[80] The existence of two rates for the same service in the same rate zone to the same class of customers is unreasonable and unjust and should be eliminated.

A change in United's FPC Gas Tariff, First Revised Volume No. 1, so as to make available to Mississippi a rate for all gas supplied to it by United consisting of a demand charge of 75¢ per Mcf per month and a commodity charge of 10¢ per Mcf would result in a fair, just, and reasonable rate for such company.

The obligation to maintain just and reasonable rates or charges is an obligation of United and it is United's duty to eliminate any rates or charges which make or grant any undue preference or advantage or subject any person to any undue prejudice or disadvantage.[81] It also may be observed that if the currently effective schedule for pipelines in the Central Rate Zone were maintained, United's rates and charges to Mississippi would on an over-all basis exceed those to other pipe-line customers similarly situated since such customers are paying a 75¢ demand charge and a 10¢ commodity charge, a rate resulting in lower over-all charges than those now being paid by Mississippi.

Mississippi has urged that the Commission has no power to increase rates under United's PL-3 Rate Schedule, unless such increase is

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[80] Section 4 of the Act, *Northern Natural Gas Co.*, Commission Opinion No. 281 (mimeo. ed. pp. 13, 14).

[81] Sections 4(a), (b) of the Act.

in accordance with a new schedule filed by United. United has heretofore indicated its willingness to apply to Mississippi the same rate which has been made applicable to other pipe-line customers in the Central Rate Zone. This decision will afford United the opportunity of meeting its obligations under Section 4 of the Act by a filing which will make available its existing PL-C rate schedule to Mississippi.

It is incumbent upon United promptly to comply with the provisions of Section 4 of the Act with respect to rates applicable to Mississippi, by making an appropriate filing.[82]



## FINDINGS AND CONCLUSIONS

Upon consideration of the entire record made in this proceeding, the evidence adduced, the briefs filed, and the matters relevant to a decision herein upon which the parties and participants have reached agreement, the Presiding Examiner *finds and concludes,* in addition to the findings and conclusions hereinbefore stated, that:

(1) United Gas Pipe Line Company is a person engaged in the transportation of natural gas in interstate commerce, and the sale in interstate commerce of such gas for resale, and is a natural gas company within the meaning of the Natural Gas Act.

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[82] *Atlantic Seaboard Corp.*, Opinion No. 225 (mimeo. ed. p. 41); *Colorado Interstate Gas Co.*, Opinion No. 235 (mimeo. ed. pp. 75-76); *Northern Natural Gas Company*, Opinion No. 281 (mimeo. ed. p. 36 et seq.). In *Michigan Consolidated Gas Company* v. *Panhandle Eastern Pipeline Company*, 173 F. 2d 784, 789, the Court of Appeals said:

"Whatever may be the limits placed by the Natural Gas Act upon the authority of the Commission in other respects, it is clear that under § 717c(b) [Sec. 4(b)] the authority of the Commission in respect to undue preferences or advantages is without limitation." See also F.P.C. et al. v. Natural Gas Pipeline Company, et al., 315 U.S. 575, 586.

(2) The provisions governing United's rates, charges, classifications, and services appearing in United's FPC Gas Tariffs, Original and First Revised Volume No. 1, are subject to the jurisdiction of the Federal Power Commission under the provisions of Section 4 of the Natural Gas Act.

(3) For the purpose of determining the reasonableness of United's rates and charges to Mississippi for the transportation and sale of natural gas subject to the Commission's jurisdiction, calendar year 1952, as adjusted, affords a reasonable test period.

(4) For such purpose United's net investment in plant is $291,406,069.

(5) Because of the availability to United of cash on hand regularly received, and held from time to time, for the payment of taxes and which such accumulation provide funds sufficient to meet allowable amounts for working capital, no specific allowance is made herein for working capital.

(6) For use in this proceeding therefore the rate base for United is $291,406,069.

(7) A fair and reasonable rate of return to be allowed United, under the evidence herein, is 6%, which when applied to the rate base set out in finding (6) will produce for the purposes of this proceeding the sum of $17,484,364.



(8) $143,628,905 is a just and reasonable amount for the total cost of service for United's entire system, including taxes and reasonable return for calendar year 1952, as adjusted.

(9) $89,218,255 is a just and reasonable amount for cost of natural gas purchased by United for calendar year 1952, as adjusted.

(10) Cost allocations as exemplified and contained in Exhibit No. 78-A are found to be fair and reasonable, and should be applied to United's costs in determining just and reasonable rates for United's sales to Mississippi.

(11) Rates and charges applicable to United's total sales to Mississippi appearing in Original Volume No. 1, of United's Gas Tariff, are excessive, unjust, unreasonable, unduly discriminatory, and preferential.

(12) United's properties are completely integrated and interconnected (except for northwest Mississippi) and are used commonly for the benefit of all United's customers.

(13) Natural gas from United's various and widespread sources is commingled before delivery to Mississippi, and is incapable of identification as coming from any specific source.

(14) On the evidence in this case, two rates in the Central Rate Zone, based on separate contracts for the "old" and "new" natural gas, are not in the public interest and should be discontinued.

(15) The omission from United's conversion tariff of provisions requiring it to supply Mississippi until May 1, 1961 with such additional quantities of natural gas as Mississippi might nominate as necessary to meet its requirements, is just, reasonable, consistent with the provisions of the Natural Gas Act and the Commission's Rules and Regulations

adopted thereunder and eliminates an undue preference to Mississippi and undue discrimination against United's other customers.

(16) The inclusion of a minimum 72% "take-or-pay-for" clause in United's rate schedules applicable to Mississippi is just and reasonable.

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(17) Just and reasonable rates and charges to Mississippi are a demand charge of 75¢ per Mcf per month and a commodity charge of 10¢ per Mcf in a single rate schedule for all natural gas supplied by United to Mississippi. Such rates and charges are the same as made to all other pipe-line customers served from United's transmission system in the Central Rate Zone.

(18) The total amount for service by United to Mississippi under such single rate if made applicable to Mississippi will be $948,410 less per year than the rates and charges being made under Rate Schedules PL-2 and PL-3 based on the test year.

(19) The continued existence of two rate schedules for United's sales to Mississippi will constitute the maintenance of an unreasonable difference in rates and charges for the same service at the same delivery point, contrary to the provisions of Section 4(b) of the Natural Gas Act.

(20) Compliance with Section 4 of the Natural Gas Act will be effected by the making of a filing by United which will eliminate unjust, unreasonable and unduly discriminatory rates to Mississippi and which will apply to Mississippi the same rates which are now applicable to all its other pipe-line customers

served from United's transmission system in the Central Rate Zone.

(21) Rate Schedule PL-2 contained in Original Volume No. 1 is an effective rate schedule without bond or undertaking applicable thereto.

(22) The "rolled-in rate" which should be made applicable to Mississippi will reduce the amount billed to Mississippi under Rate Schedule PL-2. Since no bond or undertaking was applicable to Rate Schedule PL-2, no refund is payable in connection with the payments made to United under such rate schedule.

(23) Rate Schedule PL-3, contained in Original Volume No. 1, is an increased rate still effective under bond as to Mississippi in Docket No. G-2019.

(24) A just and reasonable rate for United's gas service to Mississippi is not less than the currently effective rate under bond in Docket No. G-2019 and, therefore, no refund is payable under said bond to Mississippi.



## ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal, or upon its own motion as provided in the Commission's Rules of Practice and Procedure, that:

United shall, within twenty (20) days of the issuance of this order, make an appropriate filing which will eliminate the two-rate schedules now applicable to Mississippi and which will apply to such company a

single rate schedule which will be just, reasonable, and not unduly discriminatory or preferential.

SAMUEL BINDER
Presiding Examiner

Filed: July 18, 1955
Issued: July 21 1955

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Received August 29, 1955

Before the

FEDERAL POWER COMMISSION

IN THE MATTER

*of*

UNITED GAS PIPE LINE COMPANY
Docket Nos. G-1142 and G-2019

**Exceptions of Mississippi River Fuel Corporation To Decision of Presiding Examiner**

TO THE HONORABLE THE FEDERAL POWER COMMISSION:

Pursuant to Section 1.31 of the Commission's Rules of Practice and Procedure, Mississippi River Fuel Corporation (Mississippi) hereby appeals to the Commission from the Decision issued in this proceeding July 21, 1955 by the Honorable Samuel Binder, Presiding Examiner, and herewith files its Exceptions to the Decision.

The supporting reasons for the Exceptions are stated separately. Briefs submitted by Mississippi to the Examiner in this proceeding are on file with the Commission and reference is made thereto for fuller statements of certain of the supporting reasons for the Exceptions.

## Introduction.

These proceeedings involve rates for natural gas which United Gas Pipe Line Company (United) sells to Mississippi, one of United's four principal pipe line customers. Docket No. G-2019 involves an increased rate being collected under bond since January 3, 1953 under United's Rate Schedule PL-3. Docket No. G-1142 is an investigation into the rate charged Mississippi under United's Rate Schedule PL-2.

| | Demand (D) and Commodity (C) Rates | | | |
|---|---|---|---|---|
| | Docket No. G-2019 Rate Schedule PL-3 | | Docket No. G-1142 Rate Schedule PL-2 | |
| | D | C | D | C |
| Prior to 1953 | 45¢ | 5¢ | $1.30 | 12½¢ |
| Since January 3, 1953 | 65¢(1) | 9¢(1) | 1.30 | 12½¢ |
| Recommended by Examiner | 75¢ | 10¢ | 75¢ | 10¢ |

(1) Collected under bond.



The decrease recommended in Docket No. G-1142 is more than offset by the increase recommended in Docket No. G-2019, a higher rate than that filed by United.

| | | Demand (D) and Commodity (C) Rates | | | | |
|---|---|---|---|---|---|---|
| | | Prior to 1953 | | Recommended | | Increase |
| Docket No. | Rate Schedule | D | C | D | C | |
| G-2019 | PL-3 | 45¢ | 5¢ | 75¢ | 10¢ | $3,280,230 |
| G-1142 | PL-2 | $1.30 | 12½¢ | 75¢ | 10¢ | (1,931,047) |
| Recommended Net Increase: | | | | | | $1,349,183(1) |

(1) During the year 1953 Mississippi purchased $14,159,989 worth of gas from United, about 10% of United's total sales of gas in that year, and about 25% of United's $53,260,997 in sales to all gas pipe line companies (Item V, p. 80).

The Exceptions to the Decision of the Presiding Examiner fall under these headings:

(1) The allowance in full in United's cost-of-service of the 100% affiliated gas-purchase costs represented

by United's purchases from Union Producing Company in certain major Northern and Gulf Coast Area gas fields.

(2) The determination of an over-all allocated cost of service to Mississippi which fails to recognize United's widely different costs in the supply of gas to Mississippi from United's Northern and Gulf Coast Areas.

(3) The approval of a rolled-in form of rate for sales to Mississippi which fails to take into account (i) United's prior gas sales contract commitments to Mississippi and (ii) the widely different costs incurred in supplying these commitments.

(4) The abrogation, and modification, without supporting evidence, of the terms of Mississippi's 1945 gas purchase agreement (Rate Schedule PL-3) with United so as to:

(a) omit the provision requiring United to supply Mississippi with such additional quantities of gas as Mississippi might nominate up to May 1, 1961 to meet its requirements; and to

(b) insert a minimum 72% take-or-pay-for provision.

(5) Requiring United to file a rate schedule containing rates higher than the PL-3 rate presently on file, in violation of Section 5(a) of the Natural Gas Act.

## 7900

The Examiner's Decision consists of 116 pages. Accordingly, the Exceptions might properly be extensive so as to encompass all the Examiner's reasoning. However, for

Mississippi's purpose here it is only necessary to refer to the following portions of the Decision:

(1) Cost of Gas Purchased, pp. 41-62 (22 pages).
(2) Cost Allocation, pp. 87-97 (11 pages).
(3) Just and Reasonable Rates, pp. 108-111 (plus pp. 97-103) (12 pages).
(4) Tariff and Service Agreement Provisions, pp. 111-116 (6 pages).

Total: 51 pages.

To simplify the presentation of its position herein, it is Mississippi's purpose to except only to those findings and conclusions to which Mississippi specifically objects. The Commission's reversal of these individual findings and conclusions in the narrative of the Decision will necessarily carry with it a rejection of the line of reasoning upon which they are based.

## I.

### Gas Purchase Costs.

Mississippi excepts to the allowance in full of the cost of purchased gas bought from United's 100% affiliate, Union Producing Company (Union), and to the statements and findings of the Examiner, as follows:

The statements that:

> "... [in] the instant situation, ... the value of the gas obtained has been established in these proceedings by objective standards." (p. 48)
>
> "... the evidence presented shows that the prices contained in such contracts, when based upon objective standards unrelated to the relationship between United and Union, were not above a level which Mississippi has conceded to be fair, just, and reasonable for others, i.e., prices paid by United to Union were not above prices

reached between United and non-affiliated producers as a result of arm's length bargaining." (p. 59)

**7901**

"Reference is also made to the Panhandle case because Mississippi's statements in reference thereto demonstrate that it has accepted the basic principle of Panhandle, namely 'that gas produced by a natural gas company had the same value as a commodity at the wellhead as gas produced by an independent producer, and that such value should be attributed to it in determining the rate to which the natural gas company was entitled for sales at distant points.' " (p. 61)

"It appears that both Mississippi and the staff accept the proposition that gas produced by a pipe-line company should be valued in analogous circumstances at the same price as gas obtained at competitive levels from independent producers." (p. 62)

The findings:

"The Presiding Examiner finds that cost of gas for the test period was $89,218,255.00." (p. 62)

Finding (9):

"$89,218,255 is a just and reasonable amount for cost of natural gas purchased by United for calendar year 1952, as adjusted." (p. 118)

Finding (8):

"$143,628,905 is a just and reasonable amount for the total cost of service for United's entire system, including taxes and reasonable return for calendar year 1952, as adjusted." (p. 118)

Mississippi excepts to these statements and findings of the Examiner on the ground that:

First, the price paid by United to its 100% affiliate, Union, for gas purchased in the field is a "rigged" price dependent only upon the subjective feeling of United's management without any regulatory restriction whatsoever.

Second, no measurement of these 100% affiliated United-Union prices was made by any "objective standards", and no such measurement is possible based on any evidence introduced in these proceedings.



Third, the *Panhandle* case does not hold, and Mississippi at no time has accepted the proposition that gas produced by a pipe line compnay or its affiliate should be valued at "the same price" as gas obtained by the same purchaser from nonaffiliated producers.

Fourth, although Mississippi has not sought to contest the allowance for the cost of gas purchased from others than Union, Mississippi at no time has "conceded" such prices to be "fair, just and reasonable." Mississippi simply has not contested those costs.

While the precise basis for these Exceptions is stated in full in Mississippi's attached Brief in Support of Exceptions, it may be noted that any adequate protection of the public interest present here and in other rate making proceedings requires something more than the unquestioned acceptance of prices paid by the same purchaser to nonaffiliated producers as a sufficient test for the determination of value of the gas purchased from Union.

The Examiner admits that the *Panhandle* method was not used by United, the Staff, or by the Examiner. The sole test was whether the prices paid by United to Union were above the prices paid by United to nonaffiliated producers.

If a proper record is to be made to support the final rates

recommended by the Examiner herein, additional evidence as to the "fair field", "market", or "commodity value" for Union produced gas must be introduced in these proceedings.

* * * * * * * * * *

In that part of his Decision covering the "Cost of Gas Purchased", the Examiner went on to make further gratuitous statements that (p. 60):

> "There is no basis for concluding that if the Panhandle approach to price determination were applied here instead of the one that was adopted that there would be any reduction in the amount arrived at for gas obtained from Union".

And a statement that (p. 62):

> "The method of valuing gas employed in Panhandle if applied here would not serve to reduce cost of gas purchased and thus

**7903**

> to reduce rates to Mississippi and consequently its objections on this score as to cost of gas purchased are without merit."

Since there is not a shred of evidence in the record to support any such statements, and the Examiner points to none in his Decision, they should be stricken from the Decision as wholly beyond any evidence in the record to support them herein.

## II.

### Cost Allocation

With respect to the Examiner's findings on the cost allocation upon which United's rates to Mississippi were based, it is clear, as Mississippi points out in its attached Brief,

that the Examiner started with his preconceived ideas as to rate making, and proceeded backwards to determine the "facts" as to gas deliveries and metering based on those ideas. Mississippi accordingly excepts to the statements of the Examiner in this respect (p. 95):

> "The problem whether the Staff's and United's contentions or whether Mississippi's conflicting contentions on this point should be sustained presents two questions, the *first* being whether the allocations contended for by Mississippi should be made as a matter of sound rate making practice and the *second* whether such allocations could validly be made in the light of the physical facts of United's operation." (Emphasis supplied.)

* * * * * * * * * *

Mississippi further excepts to the supposed factual bases upon which the Examiner appears to support his final conclusions (pp. 95, 103):

> "The testimony presented in the instant proceedings has shown clearly that United operates a completely integrated natural gas system; that all of its gas resources both from nonaffiliated producers and from Union form a common pool for all the customers of United's system" (p. 95).

Also:

> "United's lines at Sterlington tie into all of United's sources of supply and United depends upon all of its sources of supply and



> all of its facilities in serving its customers in the Central Rate Zone, and no distinction between sources of supply is made in serving customers in such zone.

'Old' contract gas is not segregated or separated from 'new' contract gas, but is commingled before delivery and any allocation based upon an assumption of separately delivered gas from separated sources is based on fiction, not fact'' (pp. 102-3).

• • • • • • • • • • •

First, early in these proceedings United testified that, except for the volume of Gulf Coast gas passing via its so-called G-1447 facilities, there is little or no interchange of gas betweeen United's Northern and Southern areas, the two systems being operated more or less independently (R. 244, 246-247). The Northwest Mississippi Area is treated separately in United's operations as is Southwest Louisiana District and New Orleans District 5 (R. 245). Except for the inclusion of New Orleans District 6, the Jackson Rate Zone District is also separate, receiving gas independently from the Northern Area (R. 245).

Second, both United and the Staff recognized these separate individual segments in constructing the cost allocation studies presented in this proceeding (Ex. Nos. 71, 78-A). The Examiner made a labored effort to explain away Staff witness Stockwell's separate costing of specific facilities and sources (p. 92 of Decision).

Third, Mississippi presented evidence in these proceedings that in spite of whatever commingling might have been effected by United at a point prior to delivery to Mississippi the gas received by Mississippi from (1) Northern Area and (2) Gulf Coast sources arrives at different pressures and different Btu characteristics (R. 3848-9). It is not true that all gas is delivered through the same meter station. The two stations adjoin, but the meter tubes are separate and are operated independently of each other; the gas is separately metered, delivered, and paid for (R. 3858).

In the course of the case Mississippi presented a cost

allocation study which clearly showed the difference in cost to United of supplying gas to Mississippi (1) from its Northern Area, and (2) from its Gulf Coast sources. This study was based on a "separate costing" of facilities and sources to supply gas to Mississippi by United from (1) Northern Area and (2) Gulf Coast sources. This study was rejected by the



Examiner's inductive reasoning (working from his general ideas of "fairness" as to an appropriate basis for rate making) saying (pp. 96, 104):

> "It should be observed first that if Mississippi's theory is correct, namely, that allocations should be made based on specific use of utility property by a specific customer, then such an allocation should be made for *each* of United's jurisdictional customers.
>
> "It is quite obvious that it would be impracticable to attempt to make rates on an individual basis for each of the approximately 200 jurisdictional customers of United." (Emphasis supplied.) (p. 96)

Also:

> "In order to give functional application to the idea of a 'separate costing' for each of the claimed separate and individual services represented by each rate schedule, it would be necessary *in the case of each schedule* to determine the cost of the specific gas to United and the specific facility through which it is transported." (p. 104) (Emphasis supplied.)

As is pointed out in Mississippi's Brief attached herewith, since there are only four pipeline purchasers involved in this case (Mississippi, Texas Eastern, Southern Natural and Texas Gas) the real question—which the Examiner has

avoided—is whether a "separate costing" for gas sold to these four customers should be made for United's gas coming from (1) Northern Area, and (2) Gulf Coast sources. United's 200 other town border jurisdictional customers are not involved. At this stage of the case, the cost allocation of gas delivered from the Northern Area to Mississippi is the most important determination to be made, since Northern Area sources and facilities are utilized to deliver PL-3 gas. Mississippi accordingly excepts to these statements as being wholly illogical, and inapposite.

Mississippi further excepts to the Examiner's conclusions that (p. 107):

> ". . . Mississippi's cost of service for Rate Schedule PL-2 is not founded on sound principles and cannot be accepted as a basis for rate making."

**7906**

> ". . . This method of cost allocation for Rate Schedule PL-3 is inconsistent with Mississippi's basic theory regarding separate costing of facilities and sources."
>
> "Mississippi's approach to costs for service rendered to it by United is rejected."

Finally, Mississippi excepts to the Examiner's conclusion that (p. 107):

> "The Presiding Examiner finds that the costs as allocated by the Staff's witnesses are founded on sound principles and are correct."

Mississippi also excepts to the Examiner's formal Findings (10), (12) and (13), (p. 118), based on these statements, concerning the complete integration of United's system, the commingling of the gas delivered to Mississippi, and the acceptance of the Staff's cost allocation.

* * * * * * * * * *

Basically, it is Mississippi's position that not only do the physical facts show that United's over-all system is composed of separate individual rate areas, and United witnesses so testified, but in spite of some commingling of gas about ten miles from United's point of delivery to Mississippi, Mississippi receives—via separate lines and at a separate Btu content, and different pressure characteristics—gas from (1) United's Northern Area, and (2) United's Gulf Coast sources. In fact, this differentiation was recognized by the Staff in its cost allocation exhibits.

Based on these facts, and taking into account a disallowance of part of United's 100% affiliated gas purchase costs, Mississippi presented a cost allocation study recognizing these different rate and zone areas. This study, based on the Staff's own computations, showed not only that separate rates should be made applicable to Mississippi's purchases of (1) Northern Area and (2) Gulf Coast Area gas, but that based on such separate rates no increase over the rates presently being collected should be made applicable.

**7907**

## III.

### Form of Rate.

### ("Just and Reasonable Rates")

In his Decision the Examiner makes a number of findings with respect to the existence of the two separate rate schedules under which Mississippi now purchases gas from United from (1) "old" Northern Area, and (2) "new" Gulf Coast sources of supply. The Examiner then goes on to make findings providing only a single rate for Mississippi's separate purchases of gas from each source. Mississippi excepts to the Examiner's statements and findings in both regards.

With respect to the maintenance of the two separate rates for the separate purchase of (1) Northern Area, and

(2) Gulf Coast, gas, Mississippi excepts to the following statements of the Examiner:

> "If Mississippi ever had a preemptive right such as it claims, the exercise of such right should not be permitted because it would involve an unjust preference and would be discriminatory in its effect upon United's customers. A rate based upon a contract creating such a preemptive right would be against the public interest. On the facts in this case, the Presiding Examiner finds that two rates in the Central Rate Zone based on separate contracts for the 'old' and 'new' gas would not be in the public interest and should not be continued." (p. 99)
>
> "To permit Mississippi to have two rates based allegedly on historical contract relationships between United and Mississippi without regard to the rights of other customers in the same class, receiving the same service, in the same rate zone would amount to unlawful discrimination against such customers." (p. 100)
>
> "The situation appears to have been that pending the outcome of the Commission's investigation, United and Mississippi, for metering and billing purposes, regarded the gas delivered to Mississippi as separate gas delivered from separate and different sources. The assumptions relating to separate billing having been established to be incorrect, separate billing should be discontinued." (p. 103)

**7908**

The historical background, economic reasons, and the basic determinative factors upon which Mississippi relies are set forth in its attached Brief. It is sufficient to say that Mississippi's operations have been designed and built upon the maintenance of these two separate rate relationships, and their maintenance is necessary to Mississippi's operations.

Having determined at the outset to reject the maintenance of two different rate schedules, the Examiner then goes on to prescribe a single "rolled-in" rate for gas from these two separate sources. In this Mississippi excepts to the Examiner's statements that:

> "The rates as designed by the Staff witness would eliminate Rate Schedule PL-2, PL-3 and PL-4 for pipeline companies in the Central Rate Zone and substitute a single uniform rate schedule. United renders only one service to pipelines in the Central Rate Zone from its transmission system at a uniform cost and only one rate should apply to such service. Uniformity is necessary here to eliminate discrimination." (p. 109)
>
> "The Presiding Examiner finds that a single uniform rolled-in rate consisting of a demand charge of 75c per Mcf per month and a commodity charge of 10c per Mcf applied to sales to pipeline companies served from United's transmission system in the Central Rate Zone, including Mississippi, is just, reasonable, and lawful and creates no undue discrimination against Mississippi." (p. 111)

Mississippi also excepts to the formal findings of the Examiner which are made in support of these statements in the text of the Examiner's Decision: Findings (14), (17), (18) and (19).

• • • • • • • • • •

It is basic to Mississippi's position in this case that the two separate rate schedules for purchases of gas from United's (1) Northern Area, and (2) Gulf Coast sources be maintained. The "old" Northern Area gas supply contract has been in effect for over 25 years—since 1929, the year Mississippi's line from Perryville to St. Louis was first put into operation. Mississippi's line was founded on this contract, and Mississippi's prosperity and growth have come

in large part from the abundant supplies of natural gas available from United in this



Northern Area. It was only in the latter part of 1952 that smaller deliveries of "new" high cost Gulf Coast gas were required to be made available from United in order to care for the incremental growth on Mississippi's system.

It is only necessary to point out that of the four pipeline companies involved in this case, and purchasing gas from United, Mississippi's proportion of "new" Southern Area gas to "old" Northern Area gas is the lowest, 54%, compared to 111% for Southern Natural, 267% for Texas Eastern, and 288% for Texas Gas (Ex. No. 79). It is abundantly clear, therefore, that Mississippi stands to lose most —just as Texas Gas stands to gain most—from any "rolling-in" of costs as that recommended by the Examiner in his Decision.

Only if Mississippi is to be permitted to maintain its separate historic contract relationships for the purchase of gas from United's separate (1) Northern Area, and (2) Gulf Coast sources will it be freed from what would otherwise be a discriminatory increase in the charges for gas which it is required to purchase under this Commission's jurisdiction from United.

## IV.

### Contract Provisions.

After determining adversely the principal questions as to United's over-all cost of gas purchased, the cost allocation that should be made, and the rates that should be charged, the Examiner also makes subsidiary findings modifying Mississippi's separate gas purchase contracts with United so as to:

(a) Omit the provision in the 1945 contract requiring United to supply Mississippi with such additional quantities of gas as Mississippi might nominate up to May 1, 1961 to meet its requirements, and to

(b) Insert a minimum 72% "take-or-pay-for" provision in Mississippi's existing 1945 Northern Area gas purchase contract.

Mississippi therefore excepts to the following statements of the Examiner in the course of his Decision:



(a) As to the additional requirement provision:

"If the provisions of Mississippi's 1945 agreements mean what Mississippi claims they mean, such provisions would afford Mississippi a preferential right which would be discriminatory as respects United's other customers.

"The Presiding Examiner finds that elimination of such provisions are not in violation of law but in conformity therewith." (p. 113)

(b) As to the 72% take-or-pay-for provision:

"* * * there is no reason why the tariff provisions applicable to all other pipe-line companies in the Central Rate Zone should not be applicable to Mississippi.

"The Presiding Examiner finds that the inclusion of such 'take or pay for' provision is lawful, just, and reasonable." (p. 114)

Mississippi believes that even if the same rate were to be prescribed for purchases under both contracts there is no evidence in this record to support any findings modifying the terms and conditions of the contracts under which these separate purchases are made. Mississippi submits that at least until such evidence is adduced there is no basis for the

modifications in Mississippi's existing contracts proposed by the Examiner here.

## V.

### Ordered Increase in Rates.

The Examiner, in his Decision, finally concludes that United's rate to Mississippi now being collected under bond for "old" Northern Area gas should be increased from a 65c demand and 9c commodity charge as filed by United to a 75c demand and 10c commodity charge. His order then provides that United shall put such an increased rate and charge into effect (Decision, p. 120).

In spite of the positive behest of Section 5(a) of the Natural Gas Act that the "Commission shall have no power to order any increase in rate" the Examiner nevertheless concludes he has such a power, saying:



> "The proviso to Section 5(a) however would not preclude the Commission from eliminating existing unlawful discrimination, undue preference, and unreasonable rates." (p. 115)

Mississippi excepts to this statement of the Examiner and his formal Finding (20) in support thereof (p. 119).

Nothing in the terms of the Natural Gas Act, its legislative history, the Court decisions under the Act, or the Commission's previous decisions, provides any basis for the exercise of any such power.

### Summary.

In order to justify the increased rate for United's Northern Area gas which raises the demand charge from 65c to 75c per Mcf of monthly demand and the commodity charge from 9c to 10c per Mcf, the full allowance of the cost of United's purchased gas must be supported by clear and

convincing evidence in order that United may be found to have sustained the burden of proof cast upon it by the Act.

As a result of the introduction in the record of the contracts between Union Producing Company and United, Mississippi rebutted the validity of the prices accepted by the Staff for the cost of gas purchased by United from Union. In all, a total of $4,761,901 of accepted gas costs was proven to be unjustified. The result is that (1) United's "old" (PL-3) rate for Northern Area gas now being collected under bond cannot be justified and (2) United's "new" (PL-2) rate for Gulf Coast gas (under investigation in Docket No. G-1142) has been proven to be excessive.

On the merits in this proceeding, Mississippi has been gravely prejudiced by the Examiner's determination of a cost of service based on arbitrarily increased costs of gas purchased from United's 100% producing affiliate, Union. Thus, no proper basis exists for determining a cost of service upon which any final rate determination either as to Mississippi or any other of United's pipe line customers may be founded. All told it is Mississippi's position that no basis has been set forth as to a proper cost of service in these proceedings.

In addition, it is Mississippi's position that any reasonable cost allocation would show a substantial differential in the cost of



Mississippi's purchases of gas under its "old" low cost contract sources of supply from United's Northern Area (PL-3) and under United's "new" higher cost contract source of supply from the Gulf Coast via United's newly constructed G-1447 facilities (PL-2). No sufficient justification has been shown on the record here so as to warrant disregarding the terms of the contracts and this differential in rates under which Mississippi's purchases have been made. This is particularly true in view of the serious dis-

crimination which exists if the results of the Commission Staff's proposals are taken as a basis of rate making.

Finally, it is Mississippi's belief that no sufficient basis has been shown on the record for (a) abrogating Mississippi's privilege to call on United, until May 1, 1961, to meet its future gas supply requirements, and (b) for imposing a 72% minimum take-or-pay-for requirement on all of Mississippi's purchases of gas from United.

* * * * * * * * * * *

In the absence of such evidence and accepting the bulk of United's operating expenses except for certain gas costs, the only possible finding as to rates applicable to United's sales to Mississippi justified by such costs are (Brief, p. 36):

PL-3: 65¢ per Mcf monthly demand charge, 8¼¢ per Mcf commodity charge.

PL-2: $1.30 per Mcf monthly demand charge, 9.1¢ per Mcf commodity charge.

CONCLUSION.

In view of the deficiency in the present record, not only with regard to the cost of United's affiliated gas purchases but also with respect to the Examiner's determinations on cost allocation, "rolled-in" rate, and the unsubstantiated modification of United's contract terms with Mississippi, the Examiner's present findings should be reversed and the Commission should enter its findings and order:

(i) holding that United has not sustained the burden of proof in Docket No. G-2019 to establish the justness and reasonableness of the increased rate contained in Rate Schedule PL-3;

7913

(ii) finding that the rates charged in Rate Schedules PL-3 and PL-2 have been proven to be unjust, unreasonable and unlawful;

(iii) determining and fixing just and reasonable separate rates for Rate Schedules PL-3 and PL-2; and

(iv) requiring United to file a revised Rate Schedule PL-3 restoring the contract obligation to meet Mississippi's future requirements and omitting the proposed 72% minimum take-or-pay-for clause.

In the alternative, the case should be remanded to the Examiner for further hearings upon which properly supported findings and conclusions may be made. In any event, no warrant exists for the Examiner's proposed order seeking to increase United's level of rates to Mississippi for Northern Area gas even above the levels which United has filed for in this proceeding.

These Exceptions are further supported by the Brief which follows.

Respectfully submitted,

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Attorneys for Mississippi
River Fuel Corporation.

8001

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners:

Jerome K. Kuykendall, Chairman; Seaborn L. Digby, Frederick Stueck and William R. Connole.

100-2 Formal-Duplicate

In the Matters of
United Gas Pipe Line Company

Docket Nos. G-1142, 2019, *et al.* G-1508, G-2074, G-2210, G-2220, G-2378

## Order Modifying Decision of Presiding Examiner and Affirming Decision As So Modified

On July 18, 1955, the Presiding Examiner certified and filed with the Secretary of the Commission the record herein, including his Initial Decision which was served upon all parties to these proceedings.

Subject to review by the Commission, the Examiner required that United Gas Pipe Line Company (United), within 20 days from the issuance of the Decision, make an appropriate filing with the Commission which would eliminate Rate Schedule PL-2 and Rate Schedule PL-3 of its FPC Gas Tariff, Original Volume No. 1, applicable to the delivery and sale of natural gas in interstate commerce by United to Mississippi River Fuel Corporation (Mississippi) for resale, and which would apply to Mississippi a single rate schedule which would be just, reasonable, not unduly discriminatory or preferential. By order issued August 4, 1955, herein, the Commission, among other things, extended the time within which United was required to make the appropriate filing to a date to be fixed by further order of the Commission.

(8001)

Exceptions to the Decision were filed by Mississippi, Tyler Gas Service Company and City of Tyler, Texas (jointly), and counsel for the Staff of the Commission. Oral argument upon the exceptions was had before the Commission on September 29, 1955.

Upon consideration of all the evidence of record, the briefs filed, the Initial Decision of the Presiding Examiner, the exceptions thereto, the oral argument had, and the entire record, the Commission finds that the aforesaid Decision should be modified as hereinafter ordered, and that as so modified the Decision should be affirmed.

**8002**

The Commission *orders:*

(A) The second sentence in the first full paragraph on page 52 of the Decision (mimeo. ed.) and reading as follows:

"These rules and regulations treat the rates of 'independent producers' subject thereto which were in effect prior to June 7, 1954, as 'initial' rates, and such rates are not subject to suspension except where the increases above prices in effect prior to June 7, 1954 are involved."

erroneously suggests that rates in effect on June 7, 1954 and prior thereto when filed pursuant to the Commission's 174 series of orders are "initial rates" in all cases, and such sentence be and it is hereby eliminated from the Decision.

(B) Finding No. (2) appearing at page 117 of the Decision (mimeo. ed.) be and it is hereby modified to include reference to Section 5 of the Natural Gas Act under which the proceeding in Docket No. G-1142 was initiated, and so as to read as follows:

"The provisions governing United's rates, charges, classifications, and services appearing in United's FPC Gas Tariffs, Original and First Revised Volume No. 1, are subject to the jurisdiction of the Federal Power Commission under the provisions of Section 4 and Section 5 of the Natural Gas Act."

(C) United Gas Pipe Line Company shall, within twenty (20) days of the issuance of this order, make an appropriate filing consonant with the provisions of the order accompanying the Decision of the Presiding Examiner and appearing at page 120 thereof (mimeo. ed.).

(D) The Decision of the Presiding Examiner filed herein on July 18, 1955, and issued on July 21, 1955, as modified by this order, be and the same is hereby affirmed; and said Decision as so modified shall become effective as the decision of the Commission as of the date of issuance of this order.

**8003**

(E) To the extent that the exceptions filed by Mississippi River Fuel Corporation and by Tyler Gas Service Company and City of Tyler, Texas (jointly) are inconsistent with the order of the Commission herein, such exceptions be and the same are hereby denied.

By the Commission.

*J. H. Gutride,*
J. H. Gutride,
Acting Secretary.

Adopted: November 2, 1955
Issued: November 8, 1955

subject to the jurisdiction of the Commission, includes cancellation notices which would eliminate said Rate Schedules PL-2 and PL-3 now applicable to sales to Mississippi and would substitute therefor Rate Schedule PL-C which would then cover all pipe line sales in the Central Rate Zone. Said filing was suspended until April 1, 1956, except as to rates for resale to industrial consumers, by order issued by the Commission on October 26, 1955.

With respect to sales to Mississippi River Fuel Corporation there is included in said filing in said Docket No. G-9547 revised title sheet to United Gas Pipe Line Company's FPC Gas Tariff, First Revised Volume No. 1, together with First Revised Sheet Nos. 54 and 57 to our FPC Gas Tariff, Original Volume No. 1, under which notices are given that effective November 1, 1955, or such other date as may be prescribed by the Commission, United's Rate Schedules PL-2 and PL-3



are to be canceled and from and after the effective date of such cancellation, sales thereafter made to Mississippi will be billed under Rate Schedule PL-C, as set forth in said Tariff, First Revised Volume No. 1, which is the presently effective rate for sales to other pipe line companies in United's Central Rate Zone. Attention is also called to our First Revised Sheet No. 99, entitled "Index of Maximum Daily Quantities for Pipe Line Companies" of our Tariff, First Revised Volume No. 1.

The foregoing steps constitute full compliance with the Commission's said Order issued November 8, 1955, and when the Commission issues appropriate authorization making the above described sheets effective, United's Rate Schedule PL-C will thereupon become applicable to all pipe line sales by United in its Central Rate Zone, including United's sales to Mississippi River Fuel Corporation.

Will you please acknowledge receipt hereof for the completion of our files.

Yours very truly,

UNITED GAS PIPE LINE COMPANY

By [Ineligible signature]
Assistant Secretary

cc: Mississippi River Fuel Corporation
407 North Eighth Street
St. Louis, Missouri

RECEIVED
SEP 30 1955
FEDERAL POWER COMMISSION

# RATE SCHEDULE PL-C
## PIPE LINE SERVICE
## CENTRAL RATE ZONE

1. AVAILABILITY

This rate schedule is available to any natural gas pipeline company (hereinafter called "Buyer") for the purchase from United Gas Pipe Line Company (hereinafter called "Seller") of natural gas at delivery points located in Seller's Central Rate Zone, for resale after transmission through Buyer's transmission system, where Buyer has executed with Seller a Service Agreement.

2. APPLICABILITY AND CHARACTER OF SERVICE

This rate schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale under each Service Agreement for service under this rate schedule. Deliveries of gas hereunder up to the Maximum Daily Quantity shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

3. RATE

This rate schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale under each Service Agreement for service under this rate schedule. Deliveries of gas hereunder up to the Maximum Daily Quantity shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

3. RATE

For natural gas service rendered to Buyer each month under this rate schedule, Buyer shall pay Seller the sum of a Demand Charge and a Commodity Charge determined as follows:

| | | |
|---|---|---|
| (a) | Demand Charge<br>Per Mcf of Maximum Daily Quantity<br>in effect during the billing month | $1.10 per month |
| (b) | Commodity Charge<br>Per Mcf of natural gas delivered | 10.5¢ |

4. MINIMUM BILL

In computing the minimum bill under this rate schedule, the contract year shall be a period of 12 consecutive months beginning on the date specified on Sheet No. 99 of this First Revised Volume No. 1 as the Contract Year Anniversary.

*Issued By:* A. D. Greene, Vice President
*Issued On:* September 29, 1955

*Effective:* November 1, 1955

UNITED GAS PIPE LINE COMPANY
FPC Gas Tariff
First Revised Volume No. 1

First Revised Sheet No. 22
Superseding Original Sheet No. 22

RECEIVED
SEP 30 1955
FEDERAL POWER COMMISSION

RATE SCHEDULE PL-C
PIPE LINE SERVICE
CENTRAL RATE ZONE
(Continued)

4. MINIMUM BILL (Continued)

The annual minimum bill for a contract year shall consist of (a) the sum of all the monthly Demand Charges during such contract year, plus (b) an amount equal to the above Commodity Charge per Mcf multiplied by the product of 72% of the Maximum Daily Quantity in effect during the contract year, and 365, except that for the first contract year ending after the effective date of this rate schedule the minimum bill shall be the sum of the Demand Charges as computed above and the Commodity Charge for 72% of the Maximum Daily Quantity times 365, weighted for the number of days such previously effective rate schedule and this rate schedule were in effect, respectively.

If the maximum Daily Quantity has been changed during the contract year, the Maximum Daily Quantity to be utilized in computing the annual minimum bill shall be the weighted average of the Maximum Daily Quantities in effect during the contract year, giving effect to the number of months during which each Maximum Daily Quantity was in

first contract year ending after the effective date of this rate schedule the minimum bill shall be the sum of the Demand Charges as computed above and the Commodity Charge for 72% of the Maximum Daily Quantity times 365, weighted for the number of days such previously effective rate schedule and this rate schedule were in effect, respectively.

If the maximum Daily Quantity has been changed during the contract year, the Maximum Daily Quantity to be utilized in computing the annual minimum bill shall be the weighted average of the Maximum Daily Quantities in effect during the contract year, giving effect to the number of months during which each Maximum Daily Quantity was in effect.

Seller shall, within 60 days from the end of a contract year, render to Buyer a bill for any additional amounts payable by reason of the annual minimum bill, and Buyer shall make payment to Seller therefor within 60 days from the date of billing.

FILED WITH FEDERAL POWER COMMISSION SEP 30

RATE SCHEDULE PL-C
PIPE LINE SERVICE
CENTRAL RATE ZONE
(Continued)

5. MAXIMUM DAILY QUANTITY

The Maximum Daily Quantity shall be the maximum volume of gas, as specified in the Service Agreement which Seller is obligated to deliver to Buyer under this rate schedule and Buyer is entitled to receive on any one day except that for agreements dated prior to May 15, 1951 the Maximum Daily Quantity shall be that specified in the Index of Maximum Daily Quantities for Pipe Line Companies contained on Sheet No. 99 of this First Revised Volume No. 1.

6. DEMAND CHARGE AND ANNUAL MINIMUM BILL ADJUSTMENTS

If Seller, after being afforded a reasonable opportunity to do so, was unable to deliver to Buyer, during any one or more days during the billing month, the quantities of gas requested by Buyer on such day or days, up to the Maximum Daily Quantity in effect for such billing month, then:

6. DEMAND CHARGE AND ANNUAL MINIMUM BILL ADJUSTMENTS

If Seller, after being afforded a reasonable opportunity to do so, was unable to deliver to Buyer, during any one or more days during the billing month, the quantities of gas requested by Buyer on such day or days, up to the Maximum Daily Quantity in effect for such billing month, then:

(a) The Demand Charge for such billing month shall be reduced by an amount equal to the product of 3.7¢ and the total aggregate number of Mcf of Seller's deficiencies in delivery on such day or days, and
(b) The annual minimum bill during any contract year in which such month or months occur, shall be reduced by an amount equal to the product of 10.5¢ and the total aggregate number of Mcf of Seller's deficiencies in delivery on such day or days during the contract year, in addition to the reduction in Demand Charges effected in (a) above.

RATE SCHEDULE PL-C
PIPE LINE SERVICE
CENTRAL RATE ZONE
(Continued)

7. UNDEHYDRATED GAS ADJUSTMENT

In cases where Seller does not have dehydration facilities installed on the effective date of this rate schedule, Section 2.1(a) of the General Terms and Conditions shall not apply and the commodity charge otherwise payable each month shall be reduced by an amount equal to the product of 0.25¢ and the number of Mcf of undehydrated gas delivered to Buyer during the month.

8. DETERMINATION OF DELIVERIES

If gas delivered by Seller to Buyer under this rate schedule and under a transportation rate schedule of Seller is delivered through the same measuring facilities, then the volume delivered under this rate schedule on any day shall be the total volume delivered less the volume delivered by Buyer to Seller for transportation under such transportation rate schedule.

9. MEASUREMENT BASE

If gas delivered by Seller to Buyer under this rate schedule and under a transportation rate schedule of Seller is delivered through the same measuring facilities, then the volume delivered under this rate schedule on any day shall be the total volume delivered less the volume delivered by Buyer to Seller for transportation under such transportation rate schedule.

9. MEASUREMENT BASE

Refer to Section 1.3 of the General Terms and Conditions.

10. HEAT CONTENT

Refer to Section 2.1 of the General Terms and Conditions.

11. GENERAL TERMS AND CONDITIONS

All of the General Terms and Conditions contained in this First Revised Volume No. 1 are applicable to this rate schedule and are made a part hereof except Sections 2.2 and 3.3; and Section 2.1(a) for deliveries by Seller in Claiborne and West Carroll Parishes, Louisiana.

Received Nov 16—4:39 PM '55

UNITED GAS PIPE LINE COMPANY
SHREVEPORT, LOUISIANA
November 15, 1955
Nov 16, 1955

Federal Power Commission

100-2 Formal

Washington 25, D. C.

Re: FPC Docket Nos. G-1142, G-2019, et al.

Gentlemen:

We have received a copy of Order Modifying Decision of Presiding Examiner and Affirming Decision as so Modified, adopted by the Commission on November 2, 1955 and issued on November 8, 1955 in the above matters, under which our company is required within twenty days of the issuance of said Order to make an appropriate filing consonant with the provisions of the order accompanying the decision of the Presiding Examiner which would eliminate Rate Schedule PL-2 and Rate Schedule PL-3 of our FPC Gas Tariff, Original Volume No. 1, applicable to the delivery and sale of natural gas to Mississippi River Fuel Corporation and which would apply to Mississippi a single rate schedule which would be just, reasonable, not unduly discriminatory or preferential.

In connection with the foregoing, United respectfully calls to the attention of the Commission the filing made by it with the Commission on September 30, 1955 and designated as FPC Docket No. G-9547 which, in addition to proposing an increase in certain rates for sales of natural gas

(8010)

[redacted]

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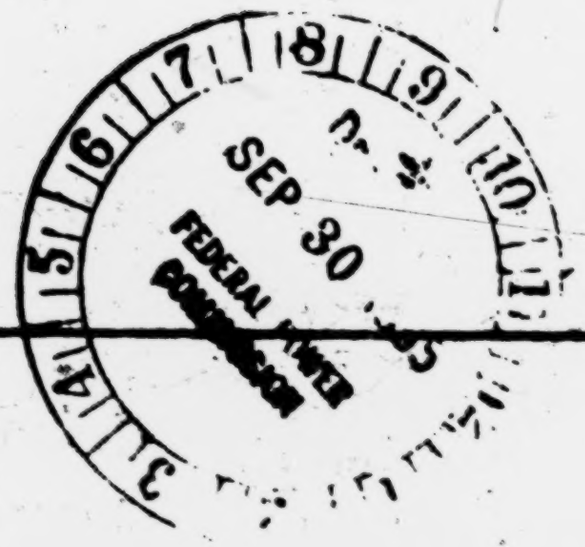

# FPC GAS TARIFF

## FIRST REVISED VOLUME NO. 1
(SUPERSEDING ORIGINAL VOLUME NO. 1)

of

## UNITED GAS PIPE LINE COMPANY

filed with

## FEDERAL POWER COMMISSION

filed with

## FEDERAL POWER COMMISSION

Communications covering rates should be addressed to:

A. D. GREENE, Vice President
United Gas Pipe Line Company
Box 1407
Shreveport, Louisiana



195

(8011)

UNITED GAS PIPE LINE COMPANY
FPC Gas Tariff
Original Volume No. 1

First Revised Sheet No. 54
Superseding Original Sheets No. 54, 55, and 56

SEP 30 1955
FEDERAL POWER COMMISSION

## CANCELLATION OF RATE SCHEDULE PL-2

Notice is hereby given that effective November 1, 1955 or such other date as may be prescribed by the Federal Power Commission Rate Schedule PL-2 constituting Original Sheets No. 54, 55 and 56 of FPC Gas Tariff Original Volume No. 1 of United Gas Pipe Line Company is to be cancelled.

From and after the effective date set forth above, sales previously billed under Rate Schedule PL-2 will be billed under Rate Schedule PL-C as contained in United Gas Pipe Line Company FPC Gas Tariff, First Revised Volume No. 1.

*Issued By:* A. D. Greene, Vice President
*Issued On:* September 29, 1955

*Effective:* November 1, 1955

UNITED GAS PIPE LINE COMPANY
FPC Gas Tariff
Original Volume No. 1

First Revised Sheet No. 57
Superseding Original Sheets No. 57, 58 and 59

## CANCELLATION OF RATE SCHEDULE PL-3

Notice is hereby given that effective November 1, 1955 or such other date as may be prescribed by the Federal Power Commission Rate Schedule PL-3 constituting Original Sheets No. 57, 58 and 59 of FPC Gas Tariff Original Volume No. 1 of United Gas Pipe Line Company, and which has been retained in effect only for sales to Mississippi River Fuel Corporation, is to be cancelled.

From and after the effective date set forth above, sales previously billed Mississippi River Fuel Corporation under Rate Schedule PL-3 will be billed under Rate Schedule PL-C as contained in United Gas Pipe Line Company FPC Gas Tariff, First Revised Volume No. 1.

previously billed Mississippi River Fuel Corporation under Rate Schedule PL-3 will be billed under Rate Schedule PL-C as contained in United Gas Pipe Line Company FPC Gas Tariff, First Revised Volume No. 1.

*Issued By:* A. D. Greene, Vice President
*Issued On:* September 29, 1955

*Effective:* November 1, 1955



904-

Filed December 7, 1955

BEFORE THE
FEDERAL POWER COMMISSION

IN THE MATTER
*of*
UNITED GAS PIPE LINE COMPANY

Docket Nos. G-1142
and G-2019 *et al.*

**Application of Mississippi River Fuel Corporation for Rehearing, Vacation and Modification of Commission Order Issued November 8, 1955.**

TO THE HONORABLE THE FEDERAL POWER COMMISSION:

COMES NOW Mississippi River Fuel Corporation ("Mississippi") and presents this its Petition and Application for Rehearing, Vacation and Modification of the Order of the Commission issued in this proceeding November 8, 1955 ordering increases and decreases in the rates of United Gas Pipe Line Company ("United") for the sale of gas to Mississippi. The rehearing herein applied for is made upon each and all of the errors, objections and grounds set forth in (1) Specifications of Errors and (2) Grounds for Vacation and Modification hereinafter set forth. Each matter set forth in these Specifications of Errors, and Grounds Relied Upon, constitutes objection and exception to the Order of the Commission in the statement that the Commission erred in every such respect.

SPECIFICATIONS OF ERRORS.

The errors of the Commission in approving the Decision of the Presiding Examiner fall under these headings:

(1) The Commission erred in allowing in full in United's cost-of-service of the 100% affiliated gas purchase costs represented by United's purchases from Union Producing Company in certain major Northern and Gulf Coast Area gas fields.



(2) The Commission erred in determining an over-all allocated cost-of-service to Mississippi which fails to recognize United's widely different costs in the supply of gas to Mississippi from United's Northern and Gulf Coast Areas.

(3) The Commission erred in approving a rolled-in form of rate for sales to Mississippi which fails to take into account (i) United's prior gas sales contract commitments to Mississippi and (ii) the widely different costs incurred in supplying these commitments.

(4) The Commission erred in abrogating and modifying without supporting evidence, of the terms of Mississippi's 1945 gas purchase agreement (Rate Schedule PL-3) with United so as to:

(a) omit the provision requiring United to supply Mississippi with such additional quantities of gas as Mississippi might nominate up to May 1, 1961 to meet its requirements; and to

(b) insert a minimum 72% take-or-pay-for provision.

(5) The Commission erred in finding United had sustained the burden of proof placed upon it by Section 4(e) of the Natural Gas Act.

(6) The Commission erred in requiring United to file a rate schedule containing rates higher than the PL-3

rate presently on file, in violation of Section 5(a) of the Natural Gas Act.

In addition, in rendering its final decision and Order herein, the Commission failed to take into account its policy set forth in the recent *Union, Sun,* and *Forest Oil* decisions, issued October 24, 1955. It also failed to take into account United's new rate increase filing, made September 30, 1955 —the day after oral argument was held in this case—pursuant to which United's rates now being paid by Mississippi will increase $937,379 effective April 1, 1956 (at the end of the five month suspension period).

If, in addition to the other legal errors committed by the Commission in its Order, proper cognizance is to be taken of these subsequently intervening factors, the Commission's Order must be vacated and modified and a rehearing granted.

The basis of the Commission's separate errors are set forth below.

**8016**

## I.

GAS PURCHASE COSTS.

The Commission erred in allowing in full of the cost of purchased gas bought from United's 100% affiliate, Union Producing Company (Union), and in approving the following statements and findings of the Examiner.

The statements that:

"... [in] the instant situation, ... the value of the gas obtained has been established in these proceedings by objective standards." (Decision, p. 48)

"... the evidence presented shows that the prices contained in such contracts, when based upon objective standards unrelated to the relationship between United and Union, were not above a level which Mississippi has conceded to be fair, just, and reasonable for others,

i.e., prices paid by United to Union were not above prices reached between United and non-affiliated producers as a result of arm's length bargaining." (Decision, p. 59)

"Reference is also made to the *Panhandle* case because Mississippi's statements in reference thereto demonstrate that it has accepted the basic principle of Panhandle, namely 'that gas produced by a natural gas company had the same value as a commodity at the wellhead as gas produced by an independent producer, and that such value should be attributed to it in determining the rate to which the natural gas company was entitled for sales at distant points.' " (Decision, p. 61)

"It appears that both Mississippi and the staff accept the proposition that gas produced by a pipe-line company should be valued in analogous circumstances at the same price as gas obtained at competitive levels from independent producers." (Decision, p. 62)

The findings in the Examiner's Decision:

"The Presiding Examiner finds that cost of gas for the test period was $89,218,255.00" (Decision, p. 62)

Finding (9):

"$89,218,255 is a just and reasonable amount for cost of natural gas purchased by United for calendar year 1952, as adjusted." (Decision, p. 118)



Finding (8):

"$143,628,905 is a just and reasonable amount for the total cost of service for United's entire system, including taxes and reasonable return for calendar year 1952, as adjusted." (Decision, p. 118)

The Commission erred in approving these statements and findings of the Examiner because:

First, the price paid by United to its 100% affiliate, Union, for gas purchased in the field is a "rigged" price dependent only upon the subjective feeling of United's management without any regulatory restriction whatsoever.

Second, no measurement of these 100% affiliated United-Union prices was made by any "objective standards," and no such measurement is possible based on any evidence introduced in these proceedings.

Third, the *Panhandle* case does not hold, and Mississippi at no time has accepted the proposition that gas produced by a pipe line company or its affiliate should be valued at "the same price" as gas obtained by the purchaser from nonaffiliated producers.

Fourth, although Mississippi has not sought to contest the allowance for the cost of gas purchased from others than Union, Mississippi at no time has "conceded" such prices to be "fair, just and reasonable."

Any adequate protection of the public interest present here and in other rate making proceedings requires something more than the unquestioned acceptance of prices paid by the same purchaser to nonaffiliated producers as a sufficient test for the determination of value of the gas purchased from Union.

The Examiner in his Decision approved by the Commission admits that the *Panhandle* method was not used by United, the Staff, or by the Examiner. The sole test was whether the prices paid by United to Union were above the prices paid by United to nonaffiliated producers.

If a proper record is to be made to support the final rates recommended by the Examiner and approved by the Commission herein,



additional evidence as to the "fair field," "market," or "commodity value" for Union produced gas must be introduced in these proceedings.

## II.

### Cost Allocation.

The Commission erred in approving the Examiner's findings as to the cost allocation upon which United's rates to Mississippi were based:

> "The testimony presented in the instant proceedings has shown clearly that United operates a completely integrated natural gas system; that all of its gas resources both from nonaffiliated producers and from Union form a common pool for all the customers of United's system" (Decision, p. 95).

Also:

> "United's lines at Sterlington tie into all of United's sources of supply and United depends upon all of its sources of supply and all of its facilities in serving its customers in the Central Rate Zone, and no distinction between sources of supply is made in serving customers in such zone. 'Old' contract gas is not segregated or separated from 'new' contract gas, but is commingled before delivery and any allocation based upon an assumption of separately delivered gas from separated sources is based on fiction, not fact" (Decision pp. 102-3).

* * * * * * * *

First, early in these proceedings United testified that, except for the volume of Gulf Coast gas passing via its so-called G-1447 facilities, there is little or no interchange of gas between United's Northern and Southern areas, the two systems being operated more or less independently (R. 244, 246-247).

Second, both United and the Staff recognized these separate individual segments in constructing the cost allocation studies presented in this proceeding (Ex. Nos. 71, 78-A).

Third, Mississippi presented evidence in these proceedings that in spite of whatever commingling might have been effected by United at a point prior to delivery to Mississippi the gas received by Mississippi



from (1) Northern Area and (2) Gulf Coast sources arrives at different pressures and different Btu characteristics (R. 3848-9).

In the course of the case Mississippi presented a cost allocation study which clearly showed the difference in cost to United of supplying gas to Mississippi (1) from its Northern Area, and (2) from its Gulf Coast sources. The Commission erred in upholding the following statements of the Examiner in this respect:

> "It should be observed first that if Mississippi's theory is correct, namely, that allocations should be made based on specific use of utility property by a specific customer, then such an allocation should be made for each of United's jurisdictional customers.
>
> "It is quite obvious that it would be impracticable to attempt to make rates on an individual basis for each of the approximately 200 jurisdictional customers of United." (Decision p. 96)

Also:

> "In order to give functional application to the idea of a 'separate costing' for each of the claimed separate and individual services represented by each rate schedule, it would be necessary in the case of each schedule to determine the cost of the specific gas to United and the specific facility through which it is transported." (Decision p. 104)

The Commission further erred in approving the Examiner's conclusions that

"... Mississippi's cost of service for Rate Schedule PL-2 is not founded on sound principles and cannot be accepted as a basis for rate making."

"... This method of cost allocation for Rate Schedule PL-3 is inconsistent with Mississippi's basic theory regarding separate costing of facilities and sources."

"Mississippi's approach to costs for service rendered to it by United is rejected." (Decision, p. 107)

Finally, the Commission erred in accepting the Examiner's conclusion that (p. 107):

"The Presiding Examiner finds that the costs as allocated by the Staff's witnesses are founded on sound principles and are correct."



The Commission further erred in approving the Examiner's formal Findings (10), (12) and (13), (p. 118), based on these statements, concerning the complete integration of United's system, the commingling of the gas delivered to Mississippi, and the acceptance of the Staff's cost allocation.

Not only do the physical facts show that United's over-all system is composed of separate individual rate areas, and United witnesses so testified, but in spite of some commingling of gas about ten miles from United's point of delivery to Mississippi, Mississippi receives—via separate lines and at a separate Btu content, and different pressure characteristics—gas from (1) United's Northern Area, and (2) United's Gulf Coast sources. In fact, this differentiation was recognized by the Staff in its cost allocation exhibits.

## III.

### Form of Rate.

With respect to the maintenance of the two separate rates for the separate purchase of (1) Northern Area, and

(2) Gulf Coast gas, the Commission erred in approving the following statements of the Examiner:

> "If Mississippi ever had a preemptive right such as it claims, the exercise of such right should not be permitted because it would involve an unjust preference and would be discriminatory in its effect upon United's customers. A rate based upon a contract creating such a preemptive right would be against the public interest. On the facts in this case, the Presiding Examiner finds that two rates in the Central Rate Zone based on separate contracts for the 'old' and 'new' gas would not be in the public interest and should not be continued." (Decision, p. 99)
>
> "To permit Mississippi to have two rates based allegedly on historical contract relationship between United and Mississippi without regard to the rights of other customers in the same class, receiving the same service, in the same rate zone would amount to unlawful discrimination against such customers." (Decision, p. 100)

**8021**

> "The situation appears to have been that pending the outcome of the Commission's investigation, United and Mississippi, for metering and billing purposes, regarded the gas delivered to Mississippi as separate gas delivered from separate and different sources. The assumptions relating to separate billing having been established to be incorrect, separate billing should be discontinued." (Decision, p. 103)

The historical background, economic reasons, and the basic determinative factors upon which Mississippi relies are set forth at length in its Exceptions to Decision of Presiding Examiner. Mississippi's operations have been designed and built upon the maintenance of these two sepa-

rate rate relationships, and their maintenance is necessary to Mississippi's operations.

The Commission further erred in approving the Examiner's statements that:

> "The rates as designed by the Staff witness would eliminate Rate Schedules PL-2, PL-3 and PL-4 for pipe-line companies in the Central Rate Zone and substitute a single uniform rate schedule. United renders only one service to pipelines in the Central Rate Zone from its transmission system at a uniform cost and only one rate should apply to such service. Uniformity is necessary here to eliminate discrimination." (Decision, p. 109)
>
> "The Presiding Examiner finds that a single uniform rolled-in rate consisting of a demand charge of 75c per Mcf per month and a commodity charge of 10c per Mcf applied to sales to pipeline companies served from United's transmission system in the Central Rate Zone, including Mississippi, is just, reasonable, and lawful and creates no undue discrimination against Mississippi." (Decision, p. 111)

The Commission also erred in approving the formal findings of the Examiner which are made in support of these statements in the text of the Examiner's Decision: Findings (14), (17), (18) and (19).

* * * * * * * * * *

It is basic to Mississippi's position in this case that the two separate rate schedules for purchases of gas from United's (1) Northern Area, and (2) Gulf Coast sources be maintained. The "old" Northern



Area gas supply contract has been in effect for over 25 years—since 1929, the year Mississippi's line from Perryville to St. Louis was first put into operation. Mississippi's

line was founded on this contract, and Mississippi's prosperity and growth have come in large part from the abundant supplies of natural gas available from United in this Northern Area. It was only in the latter part of 1952 that smaller deliveries of "new" high cost Gulf Coast gas were required to be made available from United in order to care for the incremental growth on Mississippi's system.

Of the four pipeline companies involved in this case, and purchasing gas from United, Mississippi's proportion of "new" Southern Area gas to "old" Northern Area gas is the lowest, 54%, compared to 111% for Southern Natural, 267% for Texas Eastern, and 288% for Texas Gas (Ex. No. 79). It is abundantly clear, therefore, that Mississippi is unjustly discriminated against by the "rolling-in" of costs as that recommended by the Examiner in his Decision, as approved by the Commission.

The Commission accordingly erred in destroying Mississippi's historic contract relationship for the purchase of gas from United's separate (1) Northern Area, and (2) Gulf Coast sources. The Commission further erred in ordering a discriminatory increase in the charges for gas which Mississippi is required to purchase under the Commission's jurisdiction from United.

## IV.

### Contract Provisions.

The Commission erred in approving the Examiner's subsidiary findings modifying Mississippi's separate gas purchase contracts with United so as to:

(a) Omit the provision in the 1945 contract requiring United to supply Mississippi with such additional quantities of gas as Mississippi might nominate up to May 1, 1961 to meet its requirements, and to

(b) Insert a minimum 72% "take-or-pay-for" provision in Mississippi's existing 1945 Northern Area gas purchase contract,

although no such proposal was contained in Rate Schedule PL-3 as filed by United.

The Commission, accordingly erred in approving the following statements of the Examiner in the course of his Decision:

(a) As to the additional requirement provision:

"If the provisions of Mississippi's 1945 agreement means what Mississippi claims they mean, such provisions would afford Mississippi a preferential right which would be discriminatory as respects United's other customers.

"The Presiding Examiner finds that elimination of such provisions are not in violation of law but in conformity therewith." (Decision, p. 113)

(b) As to the 72% take-or-pay-for provision:

"* * * there is no reason why the tariff provisions applicable to all other pipe-line companies in the Central Rate Zone should not be applicable to Mississippi.

"The Presiding Examiner finds that the inclusion of such 'take or pay for' provision is lawful, just, and reasonable." (Decision, p. 114)

The burden of proof is upon United and the Commission to justify any such unilateral change in the contract. Even if the same rate were to be prescribed for purchases under both contracts there is no evidence in this record upon which the Commission may support any findings modifying the terms and conditions of the contracts under which these separate purchases are made.

## V.

### Ordered Increase in Rates.

The Commission erred in providing in its Order that United should within twenty days make an appropriate

filing covering its rates and charges to Mississippi "consonant with the provisions of the Order accompanying the Decision of the Presiding Examiner and appearing at p. 120 thereof." Since the Examiner in his Decision



finally concludes that United's rate to Mississippi now being collected under bond should be increased from a 65c demand and 9c commodity charge as signed by United to a 75c demand and 10c commodity charge, this Order positively requires United to file an increase in its rates and charges over presently filed rate schedules. This Order is directly contrary to the positive behest of Section 5(a) of the Natural Gas Act (15 U. S. C., §717d(a)) which states positively:

> "That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company. . . ."

Accordingly, the Commission erred in approving the statement of the Examiner in his Decision that "the proviso to Section 5(a), however, would not preclude the Commission from eliminating existing unlawful discrimination, undue preference and unreasonable rates" (Decision, p. 115).

The Commission erred further in approving the Examiner's formal Finding (20) in support thereof (Decision, p. 119).

Nothing in the terms of the Natural Gas Act, its legislative history, the court decisions under the Act, or the Commission's previous decisions provides any basis for the exercise of any such power by the Commission.

First, no reliance may be had on Section 4(b) of the Act

cited by the Examiner and approved by the Commission. This section merely specifies a prohibition on the action to be taken by a *natural gas company*. It does not grant any authority to the Commission.

Second, the legislative history of the Act indicates no basis for the Examiner's proposed construction. The limiting proviso was inserted in the Act in the Senate, June 7, 1938, on the motion of Senator Bulkley of Ohio without debate (83 Cong. Rec. 8347). It was concurred with in the House, June 13, 1938, Congressman Lea of California (the House sponsor) making the following statement (83 Cong. Rec. 9101):

> "Mr. Fadis. That amendment provides that a gas company may apply for an increase in rates by filing a schedule.
>
> **8025**
>
> "Mr. Lea. It provides that the rates shall not be made higher than the schedule asked for by the company. The purpose of the Senate amendment was to prevent any company's rates being raised over their objection, with the idea of stifling competition with a competitor. This means that the rates of the gas company will not be raised higher than their schedules."

As the Commission has since indicated, there is nothing in this legislative background to indicate that this proviso should be given "any meaning other than that generally given to these words" (*Re Atlantic Seaboard Corporation*, 94 PUR NS 235, 256 (1952)).

The decisions which the Examiner cited and the Commission approved are not apposite and do not serve as a basis for justifying the arbitrary power which the Examiner seeks to assert on behalf of the Commission.

The one Court of Appeals decision quoted by the Examiner, *Michigan Consolidated Gas Company* vs. *Panhandle*

*Eastern Pipeline Company,* 173 F. 2d 784, 789 (6th Cir., 1949) did not involve a rate matter—it being only concerned on appeal with an allocation and continued delivery of certain quantities of gas by Panhandle to Michigan Consolidated. The reference to the Supreme Court's decision in the original *Natural Gas Pipeline* case, 315 U. S. 575, 586 (1942) is also inapposite since that case involved a reduction in rates and not an ordered increase. No court has therefore indicated that the Commission possesses the power which the Commission seeks to exercise in this instance.

The Commission erred in finding that these decisions support this position:

*Detroit* vs. *Panhandle Eastern Pipe Line Company,* 73 PUR NS 371 (1947),

*Re Atlantic Seaboard Corporation,* 94 PUR NS 235 (1952),

*Re Colorado Interstate Gas Company,* 95 PUR NS 97 (1952),

*Re Northern Natural Gas Company,* 9 PUR 3d 8 (1955).

The Commission has several times sought to have this proviso eliminated from the Act, citing in each case its lack of power in this respect (Annual Report, 1954, p. 170):

> "7. Natural Gas Act—Amendments to section 5(a).—That section 5(a) of the Natural Gas Act be amended to provide express
>
> **8026**
>
> authorization for the Commission (1) to increase rates where necessary to correct undue discrimination; and (2) to allocate gas among customers of a natural-gas company in periods of shortage."

See also:

Annual Report, 1953, p. 154.
Annual Report, 1952, p. 152.
Annual Report, 1951, p. 145.

(8026)

In its recent report, June 1, 1955 on the Magnuson Bill (S. 1880) in the present session of Congress, which proposed to give such power to the Commission, the Commission said (Hearings before Senate Committe on Interstate and Foreign Commerce, on S. 712, et. al., May-June, 1955, p. 1177):

> "4. The Commission is in agreement with the proposal that it be given authority to increase rates where necessary to correct undue discrimination. The authority is deemed necessary to implement the Commission's present ratemaking authority. There are occasions where a natural-gas company favors one purchasing community or company as against another that it would be more appropriate in order to avoid discrimination to order an increase in one rate rather than a decrease in several and at the same time permit the natural-gas company a reasonable rate of return. *The Commission's recommendation that it be given authority to raise rates to remove discrimination is necessary if the Commission is to effectively regulate a rate structure based on zones and otherwise remove inequities.*" [Emphasis supplied.]

There is, accordingly, no basis in either (1) the legislative history, (2) the Court or Commission decisions, or (3) the Commission's legislative recommendations to Congress to indicate that the Commission has the authority which the Commission here seeks to exercise. In fact, all this material indicates positively that the Commission does not have this power.

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B. Grounds for Vacation and Modification.

In support of Mississippi's request that the Order of the Commission issued November 8, 1955 should be vacated and modified pursuant to Section 1.34 of the Commission's

Rules of Practice and Procedure, Mississippi sets forth herein matters which have arisen since the hearings in this case.

Since the closing of the record and the submission of this case on oral argument September 29, 1955:

1. The Commission on October 24, 1955 issued its Orders in *Union, Sun* and *Forest Oil* cases indicating that mere comparative contract prices are insufficient to meet a natural gas company's burden of proof as a basis for securing increased rates.
2. United on September 30, 1955 filed revised FPC Gas Tariff Sheets providing for drastic over-all rate increase for its jurisdictional pipeline sales increasing the rates and charges for its sales to Mississippi by $937,378 per year to be effective—after suspension April 1, 1956.

If the Commission's criteria enumerated in its Orders in the *Union, Sun* and *Forest Oil* cases are to prevail and an orderly system of naural gas company rate regulation is to continue, a stay, vacation or modification of the Commission's Order must be issued in these proceedings.

*New Commission Orders.*

Mississippi raises the question as to whether, in view of the Commission's recent Orders in the *Union, Sun* and *Forest Oil* cases, findings can be made to sustain the allowance for the cost of purchased gas used in establishing United's rate herein to Mississippi (*Re Union Oil Company, et al.,* Docket Nos. G-4331, et al.; *Re Sun Oil Company, et al.,* Docket No. G-8288, et al.; *Re Forest Oil Corporation,* Docket No. G-5510, Orders issued October 24, 1955).

In the cost of service in this proceeding the Staff and Examiner adopted and the Commission approved a sum of $89,218,255 as representing the cost to United of purchased gas, out of a total cost of

service of $143,628,905 (Ex. No. 77-B). Accordingly, this cost of United's purchased gas represented approximately 60% of the total cost of service used as a basis for establishing rates applicable to Mississippi.

Out of its total gas purchases, $17,000,000 or approximately 20% was purchased from its 100% affiliate Union (Item U, pp. 90-95; R. 4345). The contracts under which this gas is purchased lack the essential element of arm's length bargaining and the Examiner so found (Decison, pp. 45-59). United and Union both are wholly owned subsidiaries of United Gas Corporation and have to a large extent a common set of officers and directors (R. 4345).

In order to develop the pertinent information respecting this amount of $17,000,000 representing purchases of gas from Union, Mississippi made an extensive investigation and inquiry into these 100% affiliated gas purchase costs. An analysis of Union purchases, approximately $10,340,348, was made and based on this study it was indicated that at least $4,761,901 of excessive gas costs should have been disallowed (Ex. Nos. 163, 165).

This analysis indicated that:

1. There was an absence of arm's length bargaining in the making of the contracts between Union and United (Decision, pp. 45-59).

2. United's own contract prices provided the sole basis for determining United's own allowable purchased gas costs including its gas purchase costs from its 100% affiliate Union (R. 3518-3519).

3. The method approved by the Commission and employed in the *Panhandle* case was not applied in these proceedings (Decision, pp. 60, 61, 62).

4. The only standard used by the Examiner and approved by the Commission was a comparison of

Union prices with the prices which United pays non-affiliated producers (Decision, p. 59).

5. No testimony of any sort placed in record as to
   (a) prices paid by "outside" purchasers and sellers (other than United and Union) in the fields from which United purchases gas from Union;



   (b) the competitive value of other fuels, either in the field areas where the purchases are made, or in the market areas to which United's gas is ultimately delivered; or

   (c) cost data of any kind tending to show the expenses, profits rate of return or financial results from Union's 100% affiliated sales to United.

Based on these statements by the Examiner and lacking any semblance of such evidence, it is plain that under the regulatory criteria which the Commission has laid down in the *Union, Sun* and *Forest Oil* cases, United's requested rate increase, Docket No. G-2019 must fail, and the rates approved in this pro forma manner by the Commission must be stayed and set aside.

In each of the *Union, Sun* and *Forest Oil* cases, the Commission pointed out that extensive data had been received in the proceedings, setting forth in the *Union Oil* case that a compilation of 138 contracts (a) of independent producers located in the pricing area involved, (b) entered into since 1952 (c) each being for a period of five years.

In the tabulation of the prices of the selected 138 contracts evidence presented by Union Oil purported to show that the prices were in accordance with the provisions of the contracts, whether or not any of the contracts were suspended by the Commission. The witness who prepared the

exhibits reflecting the statistics relative to the 138 contracts stated that twelve interstate pipeline natural gas companies including Union had entered into 84 contracts for the purchase of natural gas prior to November 1, 1954 at a price of 17c per Mcf or more. Such contracts were stated to be for sales and deliveries of gas in the pricing area specified in the Transco contracts with Union Oil concerned. The witness also stated that a price range of from 17c to 18c was "the most popular price, statistically speaking."

In the case of each of these 138 contracts the price shown was the total price paid by the buyer, including the current Louisiana gathering tax, plus any dehydration, gathering, or special charges which buyer was obligated to pay. These contracts were selected by Union Oil and adduced in evidence as comparable to the contracts involved in that proceeding, the other applicants here adopting the same view as Union Oil in support of their claims for the increases sought.



In spite of this extensive compilation the Commission stated that "the evidence . . . submitted . . . does not convince us," that the proposed rate was just and reasonable. In this connection the Commission stated:

> "The exhibit submitted by applicants to show relative field prices is merely a numerical listing of contract prices for gas sold within the pricing area and is insufficient to justify the proposed increases."

In supporting its statement that the evidence submitted was not convincing the Commission stated that:

> "In dealing with the rates of interstate pipeline companies, we have pointed to the burden placed by Section 4 (e) of the Act upon those natural gas companies seeking approval for rate increases and in appropriate cases have pointed to the failure of some

companies to present evidence which would justify the increases, for which reason we have denied applications for approval, and in these actions we have judicial approval. (*Mississippi River Fuel Corp.*, v. *F. P. C.*, 121 F. 2d 159, 165 (C. A. 8, 19413.) The independent producers which are applicants herein are under the same burden as interstate pipeline companies to justify any proposed rate increases, even if their operations may differ."

It is sufficient to say that the quotation in *Mississippi River Fuel Corp.* vs. *Federal Power Commission,* 121 F. 2d 159, 165 (8th Cir., 1941) states plainly:

> "Petitioner [Mississippi] produced no evidence to show the value of its property used and useful in its operations for serving its customers under the proposed rates and charges. It made no proof of operating costs in rendering that service, nor what would constitute a reasonable rate of return on the property so used. In the absence of such proof, it can not be said that the petitioner sustained the burden of proof imposed upon it. The orders appealed from are therefore affirmed."

See also:

*Re Sun Oil Company, et al.*, Docket Nos. G-8288 *et al.*, issued October 24, 1955;

*Re Forest Oil Corporation, et al.*, Docket No. G-5510, order issued October 24, 1955.

**8031**

Since in this proceeding even less evidence was introduced into the record, there being *no evidence of any sort as to field prices paid by other pipelines,* the increase sought to be collected by United should be denied as unjustified. Not

only are there no prices in the record of prices paid by other purchasers and sellers in the fields from which United purchases gas from Union, but even as to the sales of gas by Union to United the record is wholly devoid of data or evidence as to volumes of such sales, comparative value of other fuels, the acreage or reserves dedicated, or cost data of any kind.

If the regulatory criteria announced by the Commission in the *Sun, Union* and *Forest Oil* cases is to serve as a useful guide in future rate proceedings, either the increase sought to be collected by United from Mississippi here must be denied as unjustified and the proceedings dismissed, or the proceedings must be reopened for additional evidence upon which to sustain the Examiner's findings as approved by the Commission.

### United's New Filing.

On the day subsequent to oral argument in these proceedings, United filed with the Commission on September 30, 1955 certain revised FPC Gas Tariff Sheets providing for a drastic overall rate increase of $9,978,000 sharply above even the rates about which Mississippi has complained throughout these proceedings (Docket No. G-9547). By Commission order, the increase was suspended to April 1, 1956 but may become effective at that time upon United's motion. United undoubtedly will so move.

As a consequence of this co-development:

1. The effective period of the rates ordered by the Commission in this proceeding will only be about four months, i.e., from November 28, 1955 to March 31, 1956.*

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* The Commission's Order provides that United is to file new schedules "within twenty (20) days of the issuance of this Order." The Order was issued November 8, 1955; the 20 day period accordingly expires November 28, 1955.

2. Effective April 1, 1956, an increase of nearly $1,000,000 a year, in the cost of Mississippi's gas from United, will become applicable (Statements G-1.7, G-2.7 filed by United September 30, 1955, Docket No. G-9547).

**8032**

This increase is in addition to the increase of $1,349,183 over the rates in effect prior to January 3, 1953, resulting from the rate authorized by the Commission's Order in these proceedings:

| Percent rates | Demand | Commodity | Amount |
|---|---|---|---|
| PL-2 | $1.30 | 12½¢ | $ 7,865,554 |
| PL-3 | 65¢ | 9¢ | 7,836,620 |
| Total | | | $15,702,174 |
| **Proposed rates** | | | |
| PL-C | $1.10 | 10½¢ | $16,639,553 |
| Difference (Increase) | | | $ 937,379 |

United's filing for increased rates was forecast by Mississippi's President over a year ago. In a statement to the Commission he said (Hearings, 16, 954; R. 3034-3035):

"Mississippi wants a rate determination of United, if one is made at all, that has some stability to it, so that we will not be reducing rates this year and asking for rate increases next year.

"Mississippi has just concluded, in behalf of itself, a rather prolonged rate matter involving one or two more cases. We do not want to live under that situation again, and our customers and the people that buy from us I am sure don't want to live under it again.

"We want the rates from our system, and the rates in our community to have some stability, not jumping up and down every year, or less, and involving the impoundment of tremendous sums of money, and tre-

mendous expense and work on the part of the companies, this Staff, and this Commission.

"We feel there is no need, and we are opposed to expediently getting rid of this case, but asking for one that may be right down the road, and because of United's tremendous purchases and sales, and because of its effect on many, many areas from Boston to Corpus Christi, to St. Louis, to Pittsburgh, to Cleveland, it would seem to me that this would be a case where we could establish a rate that had some stability to it, and evolve and establish some principles in rate determination that have some stability and soundness to them, and that can be tested in court by appeal, if necessary.

**8033**

"For that reason, we are opposed to expediently working out a temporary situation which we feel is terribly temporary, and apparently United has apprehension about it, too.

"The effect of such a situation, if we would get a reduction, we would pass it on, and United files again, we would file, pass the incraese on, or spend another five years impounding monies."

SUMMARY

On the merits in this proceeding Mississippi has been gravely prejudiced by the Examiner's finding of a cost of service based on arbitrarily increased costs of gas purchased from United's 100% producing affiliate, Union. Thus, no proper basis exists for determining a cost of service upon which any final rate determination, either as to Mississippi or any other of United's pipeline customers, may be founded.

In addition, it is Mississippi's position that any sort of a cost allocation would show a substantial differential in the cost of Mississippi's purchases of gas under its "old"

low cost contract sources of supply from United's Northern Area (PL-3) and under United's "new" higher cost contract source of supply from the Gulf Coast via United's newly constructed G-1447 facilities (PL-2). No sufficient justification has been shown on the record here so as to warrant disregarding the terms of the contracts and this differential in rates under which Mississippi's purchases have been made. This is particularly true in view of the serious discrimination which exists if the results of the Commission Staff's proposals are taken as a basis of rate making.

Further, it is Mississippi's belief that no sufficient basis has been shown on the record for (a) abrogating Mississippi's privileges to call on United, until May 1, 1961, to meet its future gas supply requirements, and (b) for imposing a 72% minimum take-or-pay-for requirement on all of Mississippi's purchases of gas from United.

Sections 4(e) and 5(a) deny the Commission power "to order any increase in any rate contained in the currently effective schedule" of a natural gas company "on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company." A rate in excess of 65¢ demand charge and 9¢ commodity



charge for United's "old" Northern Area (PL-3) gas would be unlawful.

In addition to these errors in the record as submitted, if the Commission's new policy enumerated in the *Union, Sun* and *Forest Oil* cases is to prevail, the proposed rate increase sought to be collected from Mississippi by United must be set aside as unjustified and unsupported by the evidence. In addition, United's subsequent rate increase filings to be effective April 1, 1956, now make necessary a complete reconsideration of United's rates in this proceeding.

## Conclusion

As indicated in the Specifications of Errors and Grounds for Vacation and Modification, the Commission in sustaining the Decision of the Examiner has made findings of fact contrary to the evidence and failed to make other findings of fact sustained by the uncontroverted evidence in the record. The Commission has erred in holding that United has sustained the burden of proof cast upon it by the Act. The Commission has erred in reaching conclusions based on such erroneous findings so as to vitiate the legality of its Order issued November 8, 1955. In making such erroneuos findings and failing to make findings supported by the uncontroverted evidence, and issuing its Order affirming the Examiner's Decision thereon, the Commission has commited error which pervades its entire Order.

Wherefore, Mississippi prays that the Commission will grant rehearing of its Order issued November 8, 1955 in this matter and upon such rehearing will modify its Order by reopening the case for addi-



tional hearings; and the Commission should grant such other and further relief as appears appropriate and required in the premises.

Respectfully submitted,

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Attorneys for Mississippi River Fuel Corporation.

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EXCERPT FROM THE STATEMENT OF JEROME K. KUYKENDALL IN THE HEARINGS BEFORE THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, HOUSE OF REPRESENTATIVES—EIGHTY-FOURTH CONGRESS, FIRST SESS., ON H. R. 4560, HARRIS BILL, TO AMEND THE NATURAL GAS ACT, MARCH 22, 1955 (PP. 59-60).

'Mr. Williams. One more question: This bill deals separately with producer subsidiaries of pipline companies?

Mr. Kuykendall. Yes.

Mr. Williams. Does it treat them in the same manner as an independent producer?

Mr. Kuykendall. No. I think it treats the pipeline's affiliated companies which are in the production business just as though the pipeline company and the affiliated production company were all one company.

Mr. Williams. Even though the producer may be a separate corporate entity from the pipeline company?

Mr. Kuykendall. That is right. If they are affiliated, then we look through the corporate veil and consider them for all intents and purposes a pipeline company.

Mr. Williams. Is there a valid reason for that?

Mr. Kuykendall. Yes, because there is no presumption of arm's length bargaining between two affiliated companies. It might be possible that they would collusively jack up the price of the gas which the affiliate, the producing company, sold to the pipeline company. *That is something which should be scrutinized very closely.*

Mr. Williams. An affiliate producer quite often may be just one of the many suppliers to the pipeline company. If it were the only suppliers to the pipeline company, perhaps yes, but if it is one of many, I fail to see why it should not be considered as an independent producer.

What would be the difference between its status and the

status of another company supplying the same pipeline company?

Mr. Kuykendall. The difference is that when affiliates deal with each other, it is largely a question of taking money out of one pocket and putting it in the other, and there is not the inducement for hard negotiation and arm's-length bargaining that there is between people who really are dealing in that manner.' [Emphasis supplied.]

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners:

Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, Frederick Stueck and William R. Connole.

In the Matters of
United Gas Pipe Line Company
Docket Nos. G-1142, G-2019, *et al*

## Order Denying Application For Rehearing

Adopted: January 5, 1956 Issued: January 6, 1956

Application for rehearing of the order of the Commission issued November 8, 1955, in these matters modifying and affirming as modified the initial decision of the Presiding Examiner herein was filed by Mississippi River Fuel Corporation on December 7, 1955.

The Commission *finds*:

The assignments of error and grounds for rehearing, vacation, and modification of the November 8, 1955, order set forth no new facts and no principles of law

which either were not fully considered by the Commission when it adopted the said order, or which having been now considered warrant any change in, vacation, or modification of such order.

The Commission *orders*:

The application for rehearing filed by Mississippi River Fuel Corporation on December 7, 1955, be and it is hereby denied.

By the Commission.

Leon M. Fuquay,
Secretary.

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**8043**

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners:

Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, Frederick Stueck and William R. Connole.

In the Matters of
United Gas Pipe Line Company
Docket Nos. G-1142, G-2019, *et al.* and G-9547

**Order Allowing Tariff Sheets To Take Effect**

Adopted: January 5, 1956 Issued: January 6, 1956

By order issued November 8, 1955, in Docket Nos. G-1142, G-2019, *et al.*, the Commission modified and affirmed as modified the initial decision of the Presiding Examiner in these matters requiring United Gas Pipe Line Company (United), within 20 days from the issuance of the order, to

make an appropriate filing which would eliminate Rate Schedule PL-2 and Rate Schedule PL-3 of its FPC Gas Tariff, Original Volume No. 1, applicable to the delivery and sale of natural gas in interstate commerce by United to Mississippi River Fuel Corporation (Mississippi) for resale, and which would apply to Mississippi a single rate schedule which would be just, reasonable, not unduly discriminatory or preferential.

In response to such requirement, United filed on November 16, 1955, a letter calling to the attention of the Commission the filing made by it on September 30, 1955, which, in addition to proposing an increase in certain rates for sales of natural gas subject to the jurisdiction of the Commission, included cancellation notices which would eliminate Rate Schedule PL-2 and PL-3 and would substitute therefor Rate Schedule PL-C which would then cover all pipe line sales in United's Central Rate Zone, including all sales to Mississippi. The September 30, 1955 filings was suspended by order of the Commission issued October 26, 1955, in Docket No. G-9547 until April 1, 1956, and until such further time as such tariff might be made effective in the manner prescribed by the Natural Gas Act.

Further, United's letter states that with respect to sales to Mississippi there was included in the aforesaid filing in Docket No. G-9547 revised title sheet to United's FPC Gas Tariff, First Revised Volume No. 1, together with First Revised Sheet Nos. 54 and 57 to United's FPC Gas Tariff, Original Volume No. 1, under which notices were given that effective November 1, 1955, or such other date as may be prescribed by the Commission, United's Rate Schedules PL-2 and PL-3 are to be cancelled and from and after the effective date of such cancellation, sales thereafter made to Mississippi will be billed under Rate Schedule PL-C, as set forth in the tariff, and which is the presently effective rate for sales to other pipe-line companies in United's Central

Rate Zone. United further called the attention of the Commission to First Revised Sheet No. 99 in United's FPC Gas Tariff, First Revised Volume No. 1, entitled "Index of Maximum Daily Quantities of Pipe Line Companies".

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United states that the "foregoing steps constitute full compliance" with the Commission's order issued November 8, 1955, and when the Commission issues appropriate authorization making the above described sheets effective, United's Rate Schedule PL-C will thereupon become applicable to all pipe line sales by United in its Central Rate Zone, including United's sales to Mississippi.

It appears that if the foregoing tariff sheets, are made effective Rate Schedule PL-2 and PL-3 of United's FPC Gas Tariff, Original Volume No. 1, will be eliminated thus making applicable to Mississippi a single rate schedule which would be just, reasonable and not unduly discriminatory or preferential, all in satisfactory compliance with the requirement of November 8, 1955, order in Docket Nos. G-1142, G-2019, *et al.*

Upon consideration of the aforesaid November 8, 1955, order, United's letter filed November 16, 1955 in response thereto, United's filing of September 30, 1955, and the order of suspension issued October 26, 1955, in Docket No. G-9547, the Commission *orders*:

(A) The revised Title Sheet and First Revised Sheet No. 99 to United Gas Pipe Line Company's FPC Gas Tariff, First Revised Volume No. 1, and First Revised Sheets Nos. 54 and 57 to United Gas Pipe Line Company's FPC Gas Tariff, Original Volume No. 1 be and they are hereby allowed to take effect as of November 8, 1955, all in satisfactory compliance with the requirement of the Commission's order is-

sued November 8, 1955, in the proceedings in Docket Nos. G-1142, G-2019, *et al.*

(B) Except to the extent modified herein, the order of the Commission issued October 26, 1955, in Docket No. G-9547 shall remain and continue in full force and effect, subject to further order or orders of the Commission.

(C) This order is without prejudice to any findings or orders which have been or may hereafter be made by this Commission in any proceeding now pending, or hereafter instituted, by or against United Gas Pipe Line Company.

By the Commission.

LEON M. FUQUAY
*Secretary.*

# FPC GAS TARIFF

Original Volume No. 1

of

UNITED GAS PIPE LINE COMPANY

filed with

FEDERAL POWER COMMISSION

Communications covering rates should be addressed to:

A. D. GREENE, Vice President
United Gas Pipe Line Company
Box 1407
Shreveport, Louisiana

(8099)

[redacted]

SUPERSEDED

UNITED GAS PIPE LINE COMPANY
FPC Gas Tariff
Original Volume No. 1

Original Sheet No. 54

RATE SCHEDULE PL2
PIPE LINE SERVICE FOR
MISSISSIPPI RIVER FUEL CORPORATION

1. AVAILABILITY

This Rate Schedule is available to Mississippi River Fuel Corporation (hereinafter called "Buyer") for the purchase from United Gas Pipe Line Company (hereinafter called "Seller") of natural gas at a delivery point located near Perryville, Louisiana, for resale, where Buyer has executed with Seller a Service Agreement.

2. APPLICABILITY AND CHARACTER OF SERVICE

This Rate Schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale under a Service Agreement executed for service under this Rate Schedule. Deliveries of gas hereunder up to the Maximum Daily Quantity specified in the Service Agreement, shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

3. RATE

For natural gas service rendered to Buyer each month under this Rate Schedule, Buyer shall pay Seller the sum of a Demand Charge and a Commodity Charge determined as follows:

hereunder up to the Maximum Daily Quantity specified in the Service Agreement, shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

3. RATE

For natural gas service rendered to Buyer each month under this Rate Schedule, Buyer shall pay Seller the sum of a Demand Charge and a Commodity Charge determined as follows:

| | |
|---|---|
| (a) Demand Charge<br>Per MCF of Maximum Daily Quantity<br>in effect during the billing month | $1.30 per month |
| (b) Commodity Charge<br>Per MCF of natural gas delivered | 12.5¢ |

4. MINIMUM BILL

The annual minimum bill for a contract year shall consist of (a) the sum of all the monthly Demand Charges during such contract year, plus (b) an amount equal to 12.5¢ multiplied by the product of 72% of the Maximum Daily Quantity in effect during the contract year, and 365 (except that for the first contract year ending November 1, 1952, the multiplier shall be the number of days in the first contract year).

Issued By: [redacted] Vice President
Issued On: [redacted] JULY 3, 1952

Effective: [redacted] AUG. 3, 1952

984

931

RATE SCHEDULE PL2
PIPE LINE SERVICE FOR
MISSISSIPPI RIVER FUEL CORPORATION
(Continued)

4. MINIMUM BILL (Continued)

If the Maximum Daily Quantity has been changed during the contract year, the Maximum Daily Quantity to be utilized in computing the annual minimum bill shall be the weighted average of the Maximum Daily Quantities in effect during the contract year, giving effect to the number of months during which each Maximum Daily Quantity was in effect.

A contract year shall consist of a period of 12 consecutive months beginning on November 1, in any year, except that the period beginning with the first day of the billing month following the date of first delivery under the Service Agreement, and ending November 1, 1952, shall be considered a contract year.

Seller shall, within 60 days from the end of a contract year, render to Buyer a bill for any additional amounts payable by reason of the annual minimum bill, and Buyer shall make payment to Seller therefor within 60 days from the date of billing.

5. MAXIMUM DAILY QUANTITY

The Maximum Daily Quantity shall be the maximum volume of gas as specified in the Service Agreement which Seller is obligated to

1952, shall be considered a contract year.

Seller shall, within 60 days from the end of a contract year, render to Buyer a bill for any additional amounts payable by reason of the annual minimum bill, and Buyer shall make payment to Seller therefor within 60 days from the date of billing.

5. MAXIMUM DAILY QUANTITY

The Maximum Daily Quantity shall be the maximum volume of gas as specified in the Service Agreement which Seller is obligated to

deliver to Buyer under this Rate Schedule and Buyer is entitled to receive on any one day.

6. DEMAND CHARGE AND ANNUAL MINIMUM BILL ADJUSTMENTS

If Seller, after being afforded a reasonable opportunity to do so, was unable to deliver to Buyer, during any one or more days during the billing month, the quantities of gas requested by Buyer on such day or days, up to the Maximum Daily Quantity in effect for such billing month, then:

(a) The Demand Charge for such billing month shall be reduced by an amount equal to the product of 4.27¢ and the total aggregate number of MCF of Seller's deficiencies in delivery on such day or days, and

RATE SCHEDULE PL2
PIPE LINE SERVICE FOR
MISSISSIPPI RIVER FUEL CORPORATION
(Continued)

6. DEMAND CHARGE AND ANNUAL MINIMUM BILL ADJUSTMENTS (Continued)

(b) The annual minimum bill during any contract year in which such month or months occur, shall be reduced by an amount equal to the product of 12.5¢ and the total aggregate number of MCF of Seller's deficiencies in delivery on such day or days during the contract year, in addition to the reduction in Demand Charges effected in (a) above.

7. INITIAL PERIOD

Any gas delivered under this Rate Schedule prior to the commencement of the First contract year shall be paid for by Buyer at the rate of 16.77¢ per MCF.

8. MEASUREMENT BASE

A "cubic foot of gas", for the purpose of measurement of the gas delivered hereunder, is the amount of gas necessary to fill a cubic foot of space when the gas is at a base pressure of ten (10) ounces gauge pressure above fourteen and four-tenths (14.4) pounds per square inch atmospheric pressure and at a base temperature of sixty (60) degrees Fahrenheit.

For the purpose of measurement and computation of the gas delivered hereunder the atmospheric pressure shall be assumed to be fourteen and four-tenths (14.4) pounds per square inch regardless of the actual atmospheric pressure at which the gas is delivered and measured.

A "cubic foot of gas", for the purpose of measurement of the gas delivered hereunder, is the amount of gas necessary to fill a cubic foot of space when the gas is at a base pressure of ten (10) ounces gauge pressure above fourteen and four-tenths (14.4) pounds per square inch atmospheric pressure and at a base temperature of sixty (60) degrees Fahrenheit.

For the purpose of measurement and computation of the gas delivered hereunder the atmospheric pressure shall be assumed to be fourteen and four-tenths (14.4) pounds per square inch regardless of the actual atmospheric pressure at which the gas is delivered and measured.

Sections 1.3 and 3.2 of the General Terms and Conditions shall not apply to this Rate Schedule.

9. DETERMINATION OF DELIVERIES

If gas delivered by Seller to Buyer under this Rate Schedule and under another Sales Rate Schedule of Seller is delivered through the same measuring facilities, then the volume of gas delivered under this Rate Schedule on any day shall be the volume of gas scheduled by Buyer's dispatcher for delivery under this Rate Schedule.

10. HEAT CONTENT

Refer to Section 2.1 of the General Terms and Conditions.

11. GENERAL TERMS AND CONDITIONS

All of the General Terms and Conditions contained in this Original Volume No. 1 are applicable to this Rate Schedule and are made a part hereof except ~~to the extent otherwise indicated.~~ Sections 1.3, 2.2, 3.2, and 3.3.

# RATE SCHEDULE PL3
# PIPE LINE SERVICE

## 1. AVAILABILITY

This Rate Schedule is available to Mississippi River Fuel Corporation, Southern Natural Gas Company, Texas Eastern Transmission Corporation, and Texas Gas Transmission Corporation (each of which is hereinafter called "Buyer") for the purchase from United Gas Pipe Line Company (hereinafter called "Seller") of natural gas for resale after transmission through Buyer's pipe line system, under a Service Agreement between Seller and Buyer dated prior to May 15, 1951.

## 2. APPLICABILITY AND CHARACTER OF SERVICE

This Rate Schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale under each Service Agreement executed prior to May 15, 1951. Deliveries of gas hereunder up to the volume of gas Seller is obligated to deliver to Buyer under any such Service Agreement, shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

3. RATF

This Rate Schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale under each Service Agreement executed prior to May 15, 1951. Deliveries of gas hereunder up to the volume of gas Seller is obligated to deliver to Buyer under any such Service Agreement, shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

## 3. RATE

For natural gas service rendered to Buyer each month under this Rate Schedule, Buyer shall pay Seller the sum of a Demand Charge and a Commodity Charge determined as follows:

| | |
|---|---|
| (a) Demand Charge<br>Per MCF of Billing Demand | $.65 per month |
| (b) Commodity Charge<br>Per MCF of natural gas delivered | 9.0¢ |

## 4. MINIMUM MONTHLY BILL

The Demand Charge for the month.

RATE SCHEDULE PL3
PIPE LINE SERVICE
(Continued)

5. BILLING DEMAND

The Billing Demand shall be the largest volume of gas delivered by Seller to Buyer under this Rate Schedule on any day during the 12-month period ending with the billing month.

6. DEMAND CHARGE ADJUSTMENT

If Seller after being afforded a reasonable opportunity to do so, was unable to deliver to Buyer during any one or more days during the billing month the quantities of gas requested by Buyer on such day or days, up to the Billing Demand otherwise in effect during the month, the Demand Charge for such billing month shall be reduced by an amount equal to the product of 2.1¢ and the total aggregate number of MCF of Seller's deficiencies in deliveries during such month.

7. UNDEHYDRATED GAS ADJUSTMENT

In cases where Seller does not have dehydration facilities

so, was unable to deliver to Buyer during any one or more days during the billing month the quantities of gas requested by Buyer on such day or days, up to the Billing Demand otherwise in effect during the month, the Demand Charge for such billing month shall be reduced by an amount equal to the product of 2.1¢ and the total aggregate number of MCF of Seller's deficiencies in deliveries during such month.

7. UNDEHYDRATED GAS ADJUSTMENT

In cases where Seller does not have dehydration facilities installed on the effective date of this Rate Schedule, Section 2.1 (a) of the General Terms and Conditions shall not apply and the commodity charge otherwise payable each month shall be reduced by an amount equal to the product of 0.25¢ and the number of MCF of undehydrated gas delivered to Buyer during the month.

8. QUANTITIES

The quantities of gas which Seller is obligated to sell and deliver and Buyer is obligated to purchase and receive shall be the quantities as specified in the Service Agreement.

*Issued By:* A. D. Greene, Vice President
*Issued On:* [redacted]

*Effective:* [redacted]
Jan-3-1959

RATE SCHEDULE PL3
PIPE LINE SERVICE
(Continued)

9. DETERMINATION OF DELIVERIES

If gas delivered by Seller to Buyer under this Rate Schedule and under another sales Rate Schedule of Seller is delivered through the same measuring facilities, then the volume of gas delivered under this Rate Schedule on any day shall be the difference between the total delivery and the volume of gas scheduled by Buyer's dispatcher for delivery under such other sales schedule.

If gas delivered by Seller to Buyer under this Rate Schedule and under a transportation Rate Schedule of Seller is delivered through the same measuring facilities, then the volume delivered under this Rate Schedule on any day shall be the total volume delivered less the volume delivered by Buyer to Seller for transportation under such transportation Rate Schedule.

10. MEASUREMENT BASE

Refer to Section 1.3 of the General Terms and Conditions.

Schedule on any day shall be the total volume delivered less the volume delivered by Buyer to Seller for transportation under such transportation Rate Schedule.

10. MEASUREMENT BASE

Refer to Section 1.3 of the General Terms and Conditions.

11. HEAT CONTENT

Refer to Section 2.1 of the General Terms and Conditions.

12. GENERAL TERMS AND CONDITIONS

All of the General Terms and Conditions contained in this Original Volume No. 1 are applicable to this Rate Schedule and are made a part hereof except ~~to the extent otherwise indicated~~ Sections 2.2 and 3.3.

Issued By: A. D. Greene, Vice President
Issued On: JULY 3, 1952

989

Effective: ~~July 3, 1952~~ Jan. 3, 1953

8204

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners:

Thomas C. Buchanan, Chairman; Dale E. Doty and Harrington Wimberly.

In the Matter of
United Gas Pipe Line Company

July 31, 1952

Docket No. G-2019

**Order Allowing Conversion Tariff To Become Effective, In Part, Suspending Conversion Tariff, In Part, and Suspending Notices of Cancellation.**

On July 3, 1952, United Gas Pipe Line Company (United) filed its proposed conversion tariff, which, unless suspended, will become effective August 3, 1952, and will result in an increase of approximately $9,500,000 to five natural-gas pipe-line companies, based upon United's estimated sales for the twelve-month period ending April 30, 1953. The proposed conversion tariff is designated United Gas Pipe Line Company's FPC Gas Tariff, Original Volume No. 1 and Original Volume No. 2.

Concurrently with its filing of July 3, 1952, and subsequently on July 11, 1952, United submitted proposed notices of cancellation of rate schedules on file with the Commission covering, in whole or in part, sales of natural gas which United alleges are no longer in interstate commerce and subject to the jurisdiction of the Commission, or have never been subject to the jurisdiction of the Commission because they do not involve sales of gas in interstate commerce. The proposed notices of cancellation are set forth in Appendix A hereof.

Included in the proposed notices of cancellation is a notice of cancellation purporting to cancel, in part, Rate Schedule FPC No. 73, which covers the sale of natural gas by United to Willmut Gas & Oil Company (Willmut), a distributor of natural gas in Mississippi. Willmut objects to such proposed cancellation asserting that the question of the jurisdiction of the Commission over all of United's sales to Willmut are at issue in the complaint proceeding entitled *In the Matter of Willmut Gas & Oil Company, et al.* v. *United Gas Pipe Line Company* at Docket No. G-1158, in which proceeding hearings have been held, briefs have been filed, and the matter is now pending before the Presiding Examiner for initial decision.

By its proposed conversion tariff and proposed notices of cancellation United proposes to supersede all of the rate schedules it has on file with the Commission.

**8205**

Docket No. G-2019 (Cont'd.)

The principal changes which would be effected by the proposed conversion tariff for city-gate sales are the establishment of specific rates for industrial gas in lieu of the existing revenue-sharing arrangements, a changeover from all-requirement service to specific volumetric obligations upon execution of new service agreements, the elimination of tax adjustment clauses and provisions relating to negotiation of changes in rates, standardization of measurement bases and billing practices, and minimum heat content guarantee.

The proposed conversion tariff respecting sales to and services for United's pipe-line customers involves (a) restatements of two rate schedules as Rate Schedules PL-1 and PL-2 without change, (b) proposed substantial increases in rates for other sales under the conversion tariff Rate Schedule PL-3, and (c) proposed substantial increases

in rates for transportation services under the conversion tariff Rate Schedules T-1, T-2, and T-3. The increases in rates approximate $9,500,000 under the proposed conversion tariff Rate Schedules PL-3, T-1, T-2, and T-3.

United also requests permission, pursuant to Section 154.52 of the Regulations under the Natural Gas Act (18 CFR 154.52), to file the transportation contract with Mississippi River Fuel Corporation and three exchange service arrangements, now rendered under letter agreements, as special rate schedules to be contained in Original Volume No. 2. No changes are proposed in these arrangements.

In addition, United filed, pursuant to Section 154.85 of the Regulations under the Natural Gas Act (18 CFR 154.85), statements of the presently effective rate schedules, identifying the contract provisions which are not superseded by or in conflict with other applicable provisions of the rate schedules and the General Terms and Conditions of the proposed tariff and which are to remain in effect.

United asserts that increased rates are necessary because of the impact of the general trend of increasing costs, including the cost of purchased gas, the Texas gas gathering tax, proposed payroll increases, and pension costs for past service benefits.

In addition to adjustments to book costs for the foregoing, United's claimed costs of service are premised on a rate base including the total amounts in its Gas Plant Acquisition Adjustment account which, in whole or in part, may be improper for this purpose; and amounts for working capital which have been computed without regard to the availability of Federal and other tax accruals for such purpose. United also claims a rate of return of 6½% without submitting financial facts in support thereof, income taxes associated with such rate of return, and the expense of amortizing the total amounts in the aforesaid Gas Plant Acquisition Adjustment account on an accelerated basis.

It appears, therefore, that for these reasons, among others, the proposed increase in rates and charges as contained in proposed Rate Schedules PL-3, T-1, T-2, and T-3 and changes in conversion tariff provisions relating thereto may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful, and may place an undue burden upon ultimate consumers of natural gas.

All of United's customers, as well as interested regulatory agencies, were invited to submit comments with respect to the application for the proposed changes in rates. Comments have been received from the five pipe-line customers, seven city-gate customers, and two State commissions. Generally, the customers and State commissions object to the proposed increase, or assert they are unable to determine that the proposed increase is justified, or request that the Commission suspend the proposed conversion tariff.

The Commission *finds*:

(1) It is necessary or appropriate to carry out the provisions of the Natural Gas Act and to aid in the enforcement thereof in the public interest, that the Commission enter upon a hearing pursuant to the authority contained in Section 4(e) thereof, concerning the lawfulness of the proposed rates, charges, classifications or services contained in Rate Schedules PL-3, T-1, T-2, and T-3 as set forth in United's proposed conversion tariff together with the applicable General Terms and Conditions and pre-existing contract statements pertinent thereto; and concerning the lawfulness of the proposed notices of cancellation listed in Appendix A hereof and, pending hearing and decision thereon, that the operation of United's proposed Rate Schedules PL-3, T-1, T-2, and T-3

together with the applicable General Terms and Conditions and pre-existing contract statements pertinent thereto; and United's proposed notices of cancellation as set forth in Appendix A hereof be suspended and the use thereof deferred as provided by the Natural Gas Act. In all other respects it is appropriate to permit United's FPC Gas Tariff, Original Volume No. 1 and Original Volume No. 2, including the applicable General Terms and Conditions together with the pre-existing contract statements pertinent thereto, to become effective as of August 3, 1952.

(2) Good cause has been shown to permit the filing of the special operating arrangements set forth in Original Volume No. 2 as special rate schedules pursuant to the provisions of Section 154.52 of the Commission's Regulations under the Natural Gas Act.

**8207**

Docket No. G-2019 (Cont'd.)

The Commission *orders*:

(A) Pursuant to the authority contained in Section 4 of the Natural Gas Act, a public hearing be held at a time and place and at a date to be fixed by further order of the Commission concerning the lawfulness of the rates, charges, classifications or services, subject to the jurisdiction of the Commission, as set forth in proposed Rate Schedules PL-3, T-1, T-2, and T-3 of United Gas Pipe Line Company's proposed FPC Gas Tariff, Original Volume No. 1, including the applicable General Terms and Conditions together with the pre-existing contract statements pertinent thereto; and concerning the lawful-

ness of the proposed notices of cancellation set forth in Appendix A hereof.

(B) Pending such hearing and decision thereon, United Gas Pipe Line Company's proposed Rate Schedules PL-3, T-1, T-2, and T-3 as set forth in United Gas Pipe Line Company's proposed FPC Gas Tariff, Original Volume No. 1, including the applicable General Terms and Conditions together with the pre-existing contract statements pertinent thereto; and United Gas Pipe Line Company's proposed notices of cancellation set forth in Appendix A hereof, be and the same are hereby suspended and their use deferred until January 3, 1953, and until such further time as such proposed rate schedules, applicable General Terms and Conditions together with the pre-existing contract statements pertinent thereto, and proposed notices of cancellation may be made effective in the manner prescribed by the Natural Gas Act.

(C) In all other respects, United Gas Pipe Line Company's proposed FPC Gas Tariff, Original Volume No. 1 and Original Volume No. 2, including the applicable General Terms and Conditions together with the pre-existing contract statements pertinent thereto, be and they are hereby allowed to become effective as of August 3, 1952.

(D) Nothing contained in this order shall be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, particularly subsections (b) and (c) thereof; nor shall it be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regulations, contract, or practice affecting such services or rates

provided for in the above-described tariff, the applicable General Terms and Conditions together with pre-existing contract statements

**8208**

Docket No. G-2019 (Cont'd.)

pertinent thereto; nor shall it be deemed as recognition of any claimed contractual right or obligation affecting or relating to such services or rates.

(E) This order is without prejudice to any findings or orders which have been or may hereafter be made by this Commission in Docket No. G-1142, Docket No. G-1158, and in any proceeding now pending, or hereafter instituted, by or against United Gas Pipe Line Company.

(F) Interested State commissions may participate as provided by Sections 1.8 and 1.37(f) [18 CFR 1.37(f)] of the Commission's Rules of Practice and Procedure.

(G) The effective date of this order shall be July 31, 1952.

By the Commission.

LEON M. FUQUAY,
*Secretary.*

Date of Issuance: August 1, 1952

# APPENDIX A

## UNITED GAS PIPE LINE COMPANY

### PROPOSED NOTICES OF CANCELLATION FILED JULY 3, 1952

| Name of Customer | Supplement Number | To Rate Schedule |
|---|---|---|
| Palestine Light, Heat & Power Company | 7 | 2 |
| Louisiana Power & Light Company | 7 | 17 |
| New Orleans Public Service, Inc. | 9 | 18 |
| United Gas Corporation | 6 | 26 |
| Town of Abita Springs, Louisiana | 1 | 31 |
| Village of Delcambre, Louisiana | 2 | 51 |
| Town of Glenmora, Louisiana | 3 | 52 |
| City of Kaplan, Louisiana | 2 | 53 |
| Louisiana Public Utilities Company, Inc. | 6 | 54 |
| Village of Sunset, Louisiana | 2 | 55 |
| Town of Baldwin, Louisiana | 2 | 57 |
| Town of Scott, Louisiana | 2 | 58 |
| Louisiana Power & Light Company | 4 | 62 |
| Town of Breaux Bridge, Louisiana | 2 | 63 |
| Arkansas Louisiana Gas Company | 2 | 69 |
| Hattiesburg Gas Company | 2 | 71 |
| Interstate Natural Gas Company | 1 | 74 |
| LaPlace Gas & Fuel Company, Inc. | 1 | 79 |
| Reserve Public Utilities Corporation | 1 | 80 |
| Village of Gonzales, Louisiana | 1 | 81 |
| Norco Gas & Fuel Company, Inc. | 2 | 82 |
| Joseph Hotard | 1 | 83 |
| Town of Denham Springs, Louisiana | 1 | 84 |
| Suburban Utilities, Inc. | 1 | 85 |
| Gulf South Utilities, Inc. | 1 | 89 |
| United Gas Corporation | 13 | 27* |
| United Gas Corporation | 16 | 28* |
| United Gas Corporation | 16 | 29* |

| Name of Customer | Supplement Number | To Rate Schedule |
|---|---|---|
| United Gas Corporation | 8 | 34* |
| United Gas Corporation | 11 | 37* |
| United Gas Corporation | 19 | 56* |
| Willmut Gas & Oil Company | 7 | 73* |
| Louisiana Power & Light Company | 4 | 96* |
| Louisiana Power & Light Company | 1 | 122** |

* Cancelled in part.

** This notice was filed on July 11, 1952.

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**8257**

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Received Sep 22 12:47 PM '52

Docket No. G-2019

In the Matter of

UNITED GAS PIPE LINE COMPANY

**Petition To Intervene**

Comes now, Mississippi River Fuel Corporation (Mississippi) and files its petition to intervene in the above entitled matter and in support thereof states the following:

(1) United Gas Pipe Line Company (United) is a natural gas company under the Natural Gas Act and sells gas to Mississippi, also a natural gas company under the Natural Gas Act, in large quantities and in fact is Mississippi's single largest source of supply of natural gas which it transports in interstate commerce and sells for resale and for consumption.

(2) On July 3, 1952 United filed a proposed conversion tariff designated to become effective August 3, 1952.

(3) Among those companies as to whom such gas tariff would be applicable is Mississippi, and in the filing of United above referred to, United proposed rate increases in the price for gas which it would sell to Mississippi under then existing contracts and rate schedules already in effect.

(4) As near as Mississippi can determine the effect of the United filing would be to increase the cost of gas to Mississippi by an amount of approximaely $2,275,000 per year on a 100% load factor basis.

(5) In view of the foregoing it is Mississippi's position that it stands to be materially affected by the proposed increase in rates of United and it should be allowed to intervene therefore in order to participate in



the proceedings and to inquire into and develop whether or not the bases of United's proposed increases have been prudently, validly and legally undertaken insofar as Mississippi is concerned.

WHEREFORE, in view of the material interest of Mississippi herein and the effect the proposed rates of United will have upon Mississippi's customers it should be permitted to intervene herein and be treated as a party to the proceeding and accorded all rights to conduct cross examination, present evidence and witnesses on its own behalf and otherwise fully to participate as though an original party to this proceeding.

Respectfully submitted,

MISSISSIPPI RIVER FUEL CORPORATION

By Original Signed by H. D. GRAHAM
Vice President—Operations

8269

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners:

Thomas C. Buchanan, Chairman; Dale E. Doty, Claude L. Draper, Nelson Lee Smith and Harrington Wimberly.

October 14, 1952

Docket Nos. G-2019 and G-2074

In the Matters of
United Gas Pipe Line Company

## Order Suspending Proposed Rate Schedules and Consolidating Proceedings

On September 16, 1952, United Gas Pipe Line Company (United) filed First Revised Sheet Nos. 14 and 15 to its FPC Gas Tariff, Original Volume No. 1, which, unless suspended, will become effective October 17, 1952, and will result in an increase of approximately $131,258—based on estimated sales for the year ending September, 1953—to United Gas Corporation for resale in 15 communities and towns located in northwest Mississippi. The new rates are proposed to become effective October 15, 1952.

United asserts that increased rates are necessary because of (a) the present cost and proposed increase in the cost of gas purchased from Tennessee Gas Transmission Company (Tennessee); (b) an increase in the Federal Income Tax rates from 38%, when the present rates were established, to the current 52% rate; and (c) the impact of increases in other operating costs.

In support of the level of the proposed rates and charges, United submitted the same total system cost data submitted by it in support of its rate increase application at Docket No. G-2019, which was suspended by the Commission's

order issued August 1, 1952, until January 3, 1953, and until such further time as the proposal may be made effective in the manner prescribed by the Natural Gas Act. These cost data are based on the year 1951, as adjusted, and have been assigned directly or allocated to each of United's various rate districts, including the northwest Mississippi area. United's costs of service allocated to the northwest Mississippi area are further adjusted to include the proposed rates increase of Tennessee.

Approximately 60% of United's total claimed costs for its sales in the northwest Mississippi area reflect the increased cost of gas purchased as applied for by Tennessee at Docket No. G-2052. The Commission suspended Tennessee's application at Docket No. G-2052 until February 15, 1953, and until such further time as the proposal may be made effective in the manner prescribed by the Natural Gas Act.

**8270**

In addition, United's claimed costs of service are premised, as the Commission noted in its order issued August 1, 1952, at Docket No. G-2019, on a rate base including the total amounts in its Gas Plant Acquisition Adjustment account which, in whole or in part, may be improper for this purpose; and amounts for working capital which have been computed without regard to the availability of Federal and other tax accruals for this purpose. United also claims here, as at Docket No. G-2019, a rate of return of 6½% without submitting financial facts in support thereof, income taxes associated with such rate of return, and the expense of amortizing the total amounts in the aforesaid Gas Plant Acquisition Adjustment account on an accelerated basis. Data are not available from the rate increase application to evaluate United's treatment of gasoline operations and an apparent change in the method of determining depreciation expense from the depreciation rates

used in the proceeding *In the Matter of United Gas Pipe Line Company,* Docket No. G-148, both of which items are reflected in the allocated costs to the northwest Mississippi area.

It appears, therefore, that for these reasons, among others, the proposed increase in rates and charges as contained in proposed First Revised Sheet Nos. 14 and 15 to United's FPC Gas Tariff, Original Volume No. 1, may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful, and may place an undue burden upon ultimate consumers of natural gas.

No comment has been received from United Gas Corporation, which is the parent of United, with respect to the proposed rate increase. The Cities of Water Valley and Oxford, Mississippi, which are served at retail by United Gas Corporation, protest the proposed rate increase. General questions concerning the proposed rate increase were raised by Willmut Gas & Oil Company, a customer of United and an intervener at Docket No. G-2019.

The issues raised by the filing by United of First Revised Sheet Nos. 14 and 15 to its FPC Gas Tariff, Original Volume No. 1 are closely related to the issues raised by its proposed increase in rates and charges at Docket No. G-2019, inasmuch as the total system cost data in support thereof are the same.

The Commission *finds:*

(1) It is necessary or appropriate to carry out the provisions of the Natural Gas Act and to aid in the enforcement thereof in the public interest, that the Commission enter upon a hearing pursuant to the authority contained in Section 4(e) thereof, concerning the lawfulness of the proposed rates, charges, classifications or services contained in First Revised Sheet Nos. 14 and 15 to United Gas Pipe Line Company's FPC Gas Tariff, Original Volume No. 1 and,

pending such hearing and decision thereon, that the operation



of United Gas Pipe Line Company's First Revised Sheet Nos. 14 and 15 to its FPC Gas Tariff, Original Volume No. 1, be suspended and use thereof deferred as provided by the Natural Gas Act.

(2) Good cause exists to consolidate the proceeding at Docket No. G-2074 with the proceeding at Docket No. G-2019 for purposes of hearing.

The Commission *orders:*

(A) Pursuant to the authority contained in Section 4 of the Natural Gas Act, a public hearing be held at a time and place and at a date to be fixed by further order of the Commission concerning the lawfulness of the rates, charges, classifications, or services, subject to the jurisdiction of the Commission, as set forth in First Revised Sheet Nos. 14 and 15 of United Gas Pipe Line Company's FPC Gas Tariff, Original Volume No. 1.

(B) Pending such hearing and decision thereon, said First Revised Sheet Nos. 14 and 15 to United Gas Pipe Line Company's FPC Gas Tariff, Original Volume No. 1, filed on September 16, 1952, be and they hereby are suspended and the use thereof is deferred until March 17, 1953, and until such further time thereafter as such First Revised Sheet Nos. 14 and 15 may be made effective in the manner prescribed by the Natural Gas Act.

(C) The proceeding at Docket No. G-2074 be and the same is hereby consolidated for purposes of hearing with the proceeding at Docket No. G-2019.

(D) This order is without prejudice to any findings or

orders which have been or may hereafter be made by this Commission at Docket Nos. G-1142, G-1158 and in any proceeding now pending, or hereafter instituted, by or against United Gas Pipe Line Company.

(E) Interested State commissions may participate as provided by Sections 1.8 and 1.37(f) [18 CFR 1.37(f)] of the Commission's Rules of Practice and Procedure.

By the Commission.

LEON M. FUQUAY,
*Secretary.*

Date of Issuance: October 15, 1952

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**8273**

FEDERAL POWER COMMISSION
UNITED STATES OF AMERICA

Received Dec 19 4:18 PM '52

In the Matter of
United Gas Pipe Line Company

Docket No. G-2019

**Motion To Make Effective Suspended Rate Schedules**

Now comes United Gas Pipe Line Company (hereinafter called "United"), in the above entitled and numbered cause, and respectfully shows:

I.

Reference is made to the order of the Federal Power Commission dated July 31, 1952, and issued in the above numbered proceeding on August 1, 1952, wherein United's conversion tariff Rate Schedules, PL-3, T-1, T-2 and T-3,

together with the pre-existing contract statements pertinent thereto, were suspended until January 3, 1953. The above entitled and numbered proceeding has not been concluded and no order has been made up to the present time. United proposes to and does hereby move to make effective on January 3, 1953, the said Rate Schedules PL-3, T-1, T-2 and T-3, together with the pre-existing contract statements pertinent thereto, which were suspended by said

**8274**

order in accordance with Section 4(e) of the Natural Gas Act, as amended.

WHEREFORE, United moves that the Rate Schedules PL-3, T-1, T-2 and T-3, together with the pre-existing contract statements pertinent thereto, suspended as hereinabove set forth shall go into effect on January 3, 1953, as above stated.

Respectfully submitted,

UNITED GAS PIPE LINE COMPANY
By /s/ A. D. GREENE
*Vice President*

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**8277**

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners:

Thomas C. Buchanan, Chairman; Dale E. Doty, Claude L. Draper, Nelson Lee Smith and Harrington Wimberly.

In the Matter of United Gas Pipe Line Company
January 13, 1953, Docket No. G-2019

**Order Making Effective Increased Rates and Charges Upon Furnishing of Bond**

On July 3, 1952, United Gas Pipe Line Company (United) filed with the Commission a proposed conversion tariff,

designated "FPC Gas Tariff, Original Volume No. 1 of United Gas Pipe Line Company" and "FPC Gas Tariff, Original Volume No. 2 of United Gas Pipe Line Company," increasing, in part, the presently effective rates and charges to certain of United's interstate wholesale customers.

Section 4(e) of the Natural Gas Act provides that whenever a new rate schedule is filed, the Commission shall have authority to enter upon a hearing concerning the lawfulness of the same; and that pending such hearing and decision thereon, the Commission may suspend the operation of the new rate schedule, "but not for a longer period than five months beyond the time when it would otherwise go into effect." Said section further provides:

> "If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified."

Pending hearing and the Commission's decision upon the lawfulness of the rates proposed by United, the Commission by order issued August 1, 1952, suspended the operation, in part, of United's proposed

FPC Gas Tariff, Original Volume No. 1, particularly the proposed rates, charges, classifications, and services contained in Rate Schedules PL-3, T-1, T-2, and T-3 thereof, including the applicable General Terms and Conditions and pre-existing contract statements pertinent thereto, until January 3, 1953, and until such time thereafter as said rate schedules, applicable terms and conditions, and pre-existing contract statements become effective in the manner prescribed in the Natural Gas Act. It was indicated in the order issued August 1, 1952, that the proposed rates, if permitted to become effective, would result in increased charges to certain of United's customers of approximately $9,500,000 based on estimated sales for the twelve-month period ending April 30, 1953.

By order issued November 26, 1952, the Commission fixed December 15, 1952, as the date of commencement of hearing concerning the issues raised in this proceeding as well as in other proceedings consolidated therewith. Upon motion of United, the Commission by order issued December 11, 1952, postponed said hearing to February 2, 1953. Accordingly, the proceeding instituted for the purpose of determining the lawfulness of such increased rates has not been concluded or a decision rendered therein.

On December 19, 1952, United, pursuant to the provisions of Section 4(e) of the Natural Gas Act, filed a motion that Rate Schedules PL-3, T-1, T-2 and T-3 to its proposed conversion tariff, together with the pre-existing contract statements pertinent thereto, be made effective as of January 3, 1953.

The Commission *finds:*

It is appropriate and necessary in carrying out the provisions of the Natural Gas Act and in the public

interest to require that United refund, with interest at the rate of 6 per cent per annum, to those entitled thereto, any portion of the increased rates or charges found by the Commission in this proceeding not justified; that United bear all expense of any such required refunding; that United keep accurate accounts in detail of all amounts received by reason of the increased rates and charges made effective on January 3, 1953, specifying by whom and in whose behalf all such amounts were paid, reporting the same to the Commission monthly for each billing period; and that United furnish a corporate bond satisfactory to the Commission in the amount and conditioned as hereinafter ordered.

The Commission *orders:*

(A) United Gas Pipe Line Company shall refund to those entitled thereto any portion of the increased rates and charges made effective as of January 3, 1953, found by the Commission in this proceeding not justified, with interest at a rate of

**8279**

6 per cent per annum from the date of payment to United until refunded; shall bear all costs of such refunding; shall keep accurate accounts in detail of all amounts received by reason of such increased rates and charges for each billing period, specifying by whom and in whose behalf such amounts were paid, and reporting in writing and under oath to the Commission monthly for each billing period the names of the purchasers, the billing demands and volumes of natural gas sales to each of such purchasers, and the revenues resulting therefrom, as computed under the rates in effect prior to January 3, 1953, and under the rates allowed by this

order to become effective under bond, together with the difference in the revenues so computed; and shall, within 15 days from the date of issuance of this order, execute and file with the Secretary of the Commission a corporate bond, satisfactory to the Commission, in the amount and conditioned as set out in paragraph (B) hereof.

(B) By said corporate bond, United Gas Pipe Line Company, its surety, and their successors and assigns, jointly and severally, shall be held and firmly bound unto the Federal Power Commission, for the use and benefit of those entitled thereto, in the sum of $950,000; and said bond shall contain the following provisions:

"The condition of this obligation is such that:

"WHEREAS, United Gas Pipe Line Company (herein called 'United') on July 3, 1952, filed with the Federal Power Commission (herein called 'the Commission') its proposed conversion tariff—designated FPC Gas Tariff, Original Volume No. 1 and Original Volume No. 2—increasing, in part, the presently effective rates and charges subject to the jurisdiction of the Commission to certain of United's interstate wholesale customers as shown by such proposed conversion tariff; and

"WHEREAS, by order issued August 1, 1952, the Commission suspended the operation of said proposed conversion tariff, in part, particularly Rate Schedules PL-3, T-1, T-2 and T-3 thereof, including the applicable General Terms and Conditions and pre-existing contract statements pertinent thereto, and ordered a hearing to be held

concerning the lawfulness of the proposed rates, charges, classifications, and



services, subject to the jurisdiction of the Commission, as set forth in such suspended matters, and by said order issued August 1, 1952, the use of said rate schedules as set forth in United's FPC Gas Tariff, Original Volume No. 1, including the applicable General Terms and Conditions and pre-existing contract statements pertinent thereto was deferred until January 3, 1953, and thereafter until such further time as such suspended matters might be made effective in the manner prescribed by the Natural Gas Act; and

"WHEREAS, a hearing has not been held and the proceeding has not been concluded, and United, pursuant to the provisions of Section 4(e) of the Natural Gas Act, having on December 19, 1952, filed a motion to make the changes in rates effective as of January 3, 1953; and

"WHEREAS, the Commission, in response to said motion, on January 13, 1953, adopted its order making the rates, charges, classifications, and services set forth in Rate Schedules PL-3, T-1, T-2, and T-3 to United's FPC Gas Tariff, Original Volume No. 1, including the applicable General Terms and Conditions and pre-existing contract statements pertinent thereto, effective as of January 3, 1953, subject to United furnishing a bond in the sum of Nine Hundred and Fifty Thousand Dollars ($950,000), satisfactory to the Commission, and required that United refund any portion of the increased rates and charges made effective as of the January 3, 1953,

found by the Commission at Docket No. G-2019 not justified;

"NOW, THEREFORE, if United Gas Pipe Line Company shall, in conformity with the terms and conditions of the order adopted on January 13, 1953, by the Federal Power Commission at Docket No. G-2019, well and truly repay at such times and in such amounts, to the persons entitled thereto, and in such manner as may be required by the final order of the Commission in said proceeding, subject to court review thereof, any portion of such rates or charges collected by United Gas Pipe Line Company after January 3, 1953, as such final order may find not justified, together



with interest thereon at the rate of six (6) per cent per annum from the date of payment thereof to United Gas Pipe Line Company until refunded, and shall otherwise comply with the provisions of the Natural Gas Act relating thereto, then this obligation shall be void, otherwise to remain in full force and effect."

(C) Upon the execution by United Gas Pipe Line Company of such bond and upon approval of such bond, evidenced by letter addressed to United Gas Pipe Line Company by the Secretary of the Commission, the rates, charges, classifications, and services set forth in the aforesaid Rate Schedules PL-3, T-1, T-2, and T-3 as contained in United Gas Pipe Line Company's FPC Gas Tariff, Original Volume No. 1, including the applicable General Terms and Conditions and pre-existing contract statements pertinent thereto, shall be effective as of January 3,

1953, subject to further orders of the Commission in this proceeding.

By the Commission.

Leon M. Fuquay,
Secretary.

Date of Issuance: January 14, 1953

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**8282**

EBASCO SERVICES
INCORPORATED

Engineers—Constructors—Business Consultants

Two Rector Street
New York 6, N. Y.

---

Cable Address: "Ebascoe"

January 21, 1953

Walter B. Cosdon, Manager
Washington Office

*Please address reply to*
1625 Eye St., N. W.
Washington 6, D. C.

Federal Power Commission
Washington 25, D. C.

Re: FPC Docket No. G-2019
*United Gas Pipe Line Company*

Gentlemen:

On behalf of United Gas Pipe Line Company, and in accordance with the Commission's "Order Making Effective Increased Rates and Charges Upon Furnishing of Bond" dated January 13, 1953 in the above proceedings, we transmit herewith for filing said company's corporate bond, conditioned and executed as required by said order.

We respectfully request that said bond transmitted herewith be approved, and United Gas Pipe Line Company notified of such approval by letter, at the earliest practicable time.

Yours respectfully,
William H. Forlines

WHF:ra

Jan 21 1953

---

**8284**

Docketed Jan. 21, 1953

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

In the Matter of
UNITED GAS PIPE LINE COMPANY

Docket No. G-2019

**Bond**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, UNITED GAS PIPE LINE COMPANY, a Delaware corporation, as principal, and THE FIDELITY AND CASUALTY COMPANY OF NEW YORK, a New York corporation, its surety, and their successors and assigns, jointly and severally, shall be held and firmly bound unto the Federal Power Commission, for the use and benefit of those entitled thereto, in the sum of Nine Hundred Fifty Thousand Dollars ($950,000.00) lawful money of the United States, to which payment, well and truly to be made, they do hereby by these presents bind themselves, their successors and assigns, jointly and severally.

The condition of this obligation is such that:

WHEREAS, United Gas Pipe Line Company (herein called "United") on July 3, 1952, filed with the Federal

Power Commission (herein called "the Commission") its proposed conversion tariff—designated FPC Gas Tariff, Original Volume No. 1 and Original Volume No. 2—increasing, in part, the presently effective rates and charges subject to the jurisdiction of the Commission to certain of United's interstate wholesale customers as shown by such proposed conversion tariff; and

WHEREAS, by order issued August 1, 1952, the Commission suspended the operation of said proposed conversion tariff, in part, particularly Rate Schedules PL-3, T-1, T-2, and T-3 thereof, including the applicable General Terms and Conditions and pre-existing contract statements pertinent thereto, and ordered a hearing to be held concerning the lawfulness of the proposed rates, charges, classifications, and services, subject to the jurisdiction of the Commission, as set forth in such suspended matters, and by said order issued August 1, 1952, the use of said rate schedules as set forth in United's FPC Gas Tariff, Original Volume No. 1, including the applicable General Terms and Conditions and pre-existing contract statements pertinent thereto was deferred until January 3, 1953, and thereafter until such further time as such suspended matters might be made effective in the manner prescribed by the Natural Gas Act; and

**8285**

WHEREAS, a hearing has not been held and the proceeding has not been concluded, and United, pursuant to the provisions of Section 4(e) of the Natural Gas Act, having on December 19, 1952, filed a motion to make the changes in rates effective as of January 3, 1953; and

WHEREAS, the Commission, in response to said motion, on January 13, 1953, adopted its order making the rates, charges, classifications, and services set forth in Rate Schedules PL-3, T-1, T-2, and T-3 to United's FPC Gas Tariff, Original Volume No. 1, including the applicable

General Terms and Conditions and pre-existing contract statements pertinent thereto, effective as of January 3, 1953, subject to United furnishing a bond in the sum of Nine Hundred and Fifty Thousand Dollars ($950,000), satisfactory to the Commission, and required that United refund any portion of the increased rates and charges made effective as of January 3, 1953, found by the Commission at Docket No. G-2019 not justified;

Now, Therefore, if United Gas Pipe Line Company shall, in conformity with the terms and conditions of the order adopted on January 13, 1953, by the Federal Power Commission at Docket No. G-2019, well and truly repay at such times and in such amounts, to the persons entitled thereto, and in such manner as may be required by the final order of the Commission in said proceeding, subject to court review thereof, any portion of such rates or charges collected by United Gas Pipe Line Company after January 3, 1953, as such final order may find not justified, together with interest thereon at the rate of six (6) per cent per annum from the date of payment thereof to United Gas Pipe Line Company until refunded, and shall otherwise comply with the provisions of the Natural Gas Act relating thereto, then this obligation shall be void, otherwise to remain in full force and effect.

In Witness Whereof, United Gas Pipe Line Company, as principal, and The Fidelity and Casualty Company of New York, as surety, have caused this bond to be executed this 19th day of January, 1953.

UNITED GAS PIPE LINE COMPANY, Principal,
By A. D. Greene
Vice President

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK, Surety,
By I. Lieber
Attorney

Attest:
[Signature Ineligible]
Secretary

---

**8288**

## THE FIDELITY AND CASUALTY COMPANY OF NEW YORK

THE PIONEER BONDING COMPANY OF THE UNITED STATES

BONDING DEPARTMENT
80 MAIDEN LANE, NEW YORK, N. Y.

*Know All Men by these Presents:*

That THE FIDELITY AND CASUALTY COMPANY OF NEW YORK has made, constituted, and appointed, and by these presents does make, constitute and appoint I. Lieber its true and lawful attorney; for it and in its name, place, and stead to execute on behalf of the said Company, as surety, a certain bond not exceeding ($1,000,000.00) — One Million Dollars in amount and describable as follows:

Obligor: United Gas Pipe Line Company, Shreveport, Louisiana.

Obligee: Federal Power Commission, Washington, D. C.

Nature of obligation: Rate Refunding Bond.

IN WITNESS WHEREOF The Fidelity and Casualty Company of New York has caused its official seal to be hereunto affixed, and these presents to be signed by one of its vice presidents and attested by one of its assistant secretaries this 19th day of January, 1953.

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK

Attest:
A. J. MILLER
*Assistant Secretary*

By JOHN BRODSKY
*Vice President*

8290

Jan 30 1953

Docket No. G-2019

United Gas Pipe Line Company
c/o Ebasco Services, Inc.
1625 Eye Street, N. W.
Washington 6, D. C.

Gentlemen:

With reference to your letter of January 21, 1953, transmitting your corporate bond in the amount of $950,000 with The Fidelity and Casualty Company of New York as surety in response to the Commission's order issued January 14, 1953, in the above matter, you are advised that such bond dated January 9, 1953, is considered to be satisfactory and has been accepted for filing.

By direction of the Commission.

Leon M. Fuquay
Secretary

8569

Received Mar 28 10:43 AM '56

UNITED GAS PIPE LINE COMPANY
SHREVEPORT, LOUISIANA

January 26, 1956
Federal Power Commission
Official File Copy

REGISTERED MAIL—RETURN RECEIPT REQUESTED

Mississippi River Fuel Corporation
407 North Eighth Street
St. Louis 1, Missouri

Re: FPC Docket Nos. G-1142, et al
United Gas Pipe Line Company

Gentlemen:

In accordance with Order issued by the Federal Power Commission on January 6, 1956 in the above matters we enclose herewith our check payable to your order in the amount of $161,137.71, representing the refund due you as shown by our enclosed Credit Memo of January 25, 1956, covering the period beginning November 8, 1955 and ending December 31, 1955.

Your very truly,
UNITED GAS PIPE LINE COMPANY
By L. V. Tracht
Treasurer

cc: Federal Power Commission—w/copy of Credit Memo above referred to. Washington 25, D. C.

bec: Messrs.: M. V. Cousins
W. O. Crain
D. D. Dillingham
Geo. D. Fiser
A. D. Greene
C. W. Greenwood, Jr.
J. G. Hicks
R. E. Hull
Ed Parkes
L. C. Poindexter
R. U. Vandervoert

**8570**

Received March 29, 1956

Form 22066 Std. 25M 1-54

UNITED GAS PIPE LINE COMPANY
P. O. Box 1422
Monroe, Louisiana

To: Mississippi River Fuel Corporation
407 North Eighth Street
St. Louis 1, Missouri

Date, January 25, 1956
Invoice No. _____
Voucher No. _____

WE credit YOUR ACCOUNT with the difference be-

(Charge - Credit)

tween amounts heretofore billed under Rate Schedules PL-2 and PL-3 and the amount under Rate Schedule PL-C which was made effective as of November 8, 1955, by the Federal Power Commission by its Order adopted January 5, 1956, at Docket Nos. G-1142, et al and issued January 6, 1956, for the period beginning November 8, 1955, and ending December 31, 1955:

| | Amounts Billed | | | Recomputed per Order of F.P.C. | |
|---|---|---|---|---|---|
| | 150,000 Contract Schedule PL-2 | 195,000 Contract Schedule PL-3 | | Schedule PL-C* | Credit |
| 1955 | $1.30 + 12½¢ | 65¢ + 9¢ | Total | 75¢ + 10¢ | Due |
| Nov. 8 thru 30 | $ 496,900.88 | 518,230.71 | 1,015,131.59 | 947,347.85 | $ 67,783.74 |
| Dec. 1 thru 31 | 682,621.13 | 694,025.19 | 1,376,646.32 | 1,283,292.35 | 93,353.97 |
| Total | $1,179,522.01 | 1,212,255.90 | 2,391,777.91 | 2,230,640.20 | $161,137.71 |

* Using applicable maximum daily quantities shown on First Revised Sheet No. 99 included in FPC Gas Tariff, First Revised Volume No. 1 of United Gas Pipe Line Company filed with Federal Power Commission and with volumes computed in accordance with General Terms and Conditions therein.

DETACH

(8571)

| | | |
|---|---|---|
| 1-25-56 | In payment of refund as per our Credit Memo of January 25, 1956, representing the difference between amounts billed under Rate Schedules PL-2 and PL-3 and amount due under Rate Schedule PL-C for the period beginning November 8, 1955 and ending December 31, 1955. | 161,137.71 |

1-1281

M

GENERAL FUND

# UNITED GAS PIPE LINE COMPANY

SHREVEPORT, LOUISIANA

1-1281

PAY $161,137.71

TO THE ORDER OF Mississippi River Fuel Corporation
407 North Eighth Street
St. Louis 1, Missouri

UNITED GAS PIPE LINE COMPANY

DUPLICATE OFFICE COPY

TO FIRST NATIONAL BANK OF SHREVEPORT
SHREVEPORT, LOUISIANA

84-2
1111

GENERAL FUND

TO FIRST NATIONAL BANK OF SHREVEPORT 84-2
SHREVEPORT, LOUISIANA 1111

CANCELLED

# UNITED GAS PIPE LINE COMPANY

SHREVEPORT, LOUISIANA 1-1281

PAY EXACTLY ONE HUNDRED SIXTY-ONE THOUSAND ONE HUNDRED THIRTY-SEVEN AND 71/100 $ 161,137.71

TO THE ORDER OF Mississippi River Fuel Corporation
407 North Eighth Street
St. Louis 1, Missouri

MAIL

UNITED GAS PIPE LINE COMPANY

FEB - 4 [illegible]

TO FIRST NATIONAL BANK OF SHREVEPORT 84-2
SHREVEPORT, LOUISIANA

842 842

CANCELLED

1021

8572

May 29, 1952

Reference F.P.C. Rate Schedule No. 9

UNITED GAS PIPELINE COMPANY

This statement is made pursuant to Section 154.85 of Federal Power Commission Rules and Regulations with reference to the existing Gas Sales Agreement between United Gas Pipe Line Company and Mississippi River Fuel Corporation, or their predecessors in title, dated August 1, 1929, as amended and supplemented.

This Contract, as amended and supplemented, continues in effect as an executed Service Agreement for service to the extent that the provisions thereof are not superseded by or inconsistent with the applicable provisions of the Rate Schedules and General Terms and Conditions of United Gas Pipe Line Company's Federal Power Commission Gas Tariff.

The following provisions of said Contract, and amendments and supplements thereto (herein identified by F.P.C. Supplement Number to the above numbered Rate Schedule) remain in effect and have not been superseded by said Gas Tariff:

| | Part Retained |
|---|---|
| Preamble | All |
| Article I | All |
| Article II | All |
| Article III, including exhibit map attached to contract | All |
| Article IV, as amended by Supplements Nos. 2, 8 and 14 | All |
| Article V | All |
| Article VI | All |
| Article VIII | All |
| Article XI | First two sentences |
| Article XV | All except 2nd and 3rd sentences |
| Article XVII | All |
| Article XX | First sentence. |
| Article XXIV | All |
| Article XXV | Definition of "year". |
| Article XXVI | All |
| Article XXVII | All |
| Testimonium Clause and Signatures | All |
| Supplements: | |
| Supplement No. 2 | All |
| Supplement No. 8 | All |
| Supplement No. 11 | All except Articles 4, 5, 6, 8 & 9 |
| Supplement No. 12 | All |
| Supplement No. 14 | All |
| Supplement No. 15 | All except Articles 2, 3, 5 & 6 |
| Supplement No. 1 to Supplement No. 15 | All except last 2 sentences of 2nd paragraph. |

8573

May 29, 1952

Reference F.P.C. Rate Schedule No. 10

UNITED GAS PIPELINE COMPANY

This statement is made pursuant to Section 154.85 of Federal Power Commission Rules and Regulations with reference to the existing Gas Sales Agreement between United Gas Pipe Line Company and Mississippi River Fuel Corporation, or their predecessors in title, dated August 1, 1929, as amended and supplemented.

This Contract, as amended and supplemented, continues in effect as an executed Service Agreement for service to the extent that the provisions thereof are not superseded by or inconsistent with the applicable provisions of the Rate Schedules and General Terms and Conditions of United Gas Pipe Line Company's Federal Power Commission Gas Tariff.

The following provisions of said Contract, and amendments and supplements thereto (herein identified by F.P.C. Supplement Number to the above numbered Rate Schedule) remain in effect and have not been superseded by said Gas Tariff:

| | Part Retained |
|---|---|
| Preamble | All |
| Article I | All |
| Article II | All |
| Article III, including exhibit map attached to contract | All |
| Article IV, as amended by Supplements Nos. 2, 8 and 14 | All |
| Article V | All |
| Article VI | All |
| Article VIII | All |
| Article XI | First two sentences |

| | |
|---|---|
| Article XV | All except 2nd and 3rd sentences |
| Article XVII | All |
| Article XX | First sentence. |
| Article XXIV | All |
| Article XXV | Definition of "year". |
| Article XXVI | All |
| Testimonium Clause and Signatures | All |
| Supplements: | |
| Supplement No. 2 | All |
| Supplement No. 8 | All |
| Supplement No. 11 | All except Articles 4, 5, 6, 8 & 9 |
| Supplement No. 12 | All |
| Supplement No. 14 | All |
| Supplement No. 15 | All except Articles 2, 3, 5 & 6 |
| Supplement No. 1 to Supplement No. 15 | All except last 2 sentences of 2nd paragraph. |

**8574**

May 29, 1952

Reference F.P.C. Rate Schedule No. 11

UNITED GAS PIPELINE COMPANY

This statement is made pursuant to Section 154.85 of Federal Power Commission Rules and Regulations with reference to the existing Gas Sales Agreement between United Gas Pipe Line Company and Mississippi River Fuel Corporation, or their predecessors in title, dated August 1, 1929, as amended and supplemented.

This Contract, as amended and supplemented, continues in effect as an executed Service Agreement for service to the extent that the provisions thereof are not superseded by or inconsistent with the applicable provisions of the Rate Schedules and General Terms and Conditions of United

Gas Pipe Line Company's Federal Power Commission Gas Tariff.

The following provisions of said Contract, and amendments and supplements thereto (herein identified by F.P.C. Supplement Number to the above numbered Rate Schedule) remain in effect and have not been superseded by said Gas Tariff:

| | Part Retained |
|---|---|
| Preamble | All |
| Article I | All |
| Article II | All |
| Article III, including exhibit map attached to contract | All |
| Article IV, as amended by Supplements Nos. 2, 8 and 14 | All |
| Article V | All |
| Article VI | All |
| Article VIII | All |
| Article XI | First two sentences |
| Article XV | All except 2nd and 3rd sentences |
| Article XVII | All |
| Article XX | First sentence. |
| Article XXIV | All |
| Article XXV | Definition of "year". |
| Article XXVI | All |
| Testimonium Clause and Signatures | All |
| Supplements: | |
| Supplement No. 2 | All |
| Supplement No. 8 | All |
| Supplement No. 11 | All except Articles 4, 5, 6, 8 & 9 |
| Supplement No. 12 | All |
| Supplement No. 14 | All |
| Supplement No. 15 | All except Articles 2, 3, 5 & 6 |
| Supplement No. 1 to Supplement No. 15 | All except last 2 sentences of 2nd paragraph. |

8575

May 29, 1952

Reference F.P.C. Rate Schedule No. 115

UNITED GAS PIPELINE COMPANY

This statement is made pursuant to Section 154.85 of Federal Power Commission Rules and Regulations with reference to the existing Gas Sales Agreement between United Gas Pipe Line Company and Mississippi River Fuel Corporation, or their predecessors in title, dated December 1, 1951, as amended and supplemented.

This Contract, as amended and supplemented, continues in effect as an executed Service Agreement for service to the extent that the provisions thereof are not superseded by or inconsistent with the applicable provisions of the Rate Schedules and General Terms and Conditions of United Gas Pipe Line Company's Federal Power Commission Gas Tariff.

The following provisions of said Contract, and amendments and supplements thereto (herein identified by F.P.C. Supplement Number to the above numbered Rate Schedule) remain in effect and have not been superseded by said Gas Tariff:

| | Part Retained |
|---|---|
| Preamble | All |
| Article 1 | All |
| Article 2 | All except Section B and 2nd paragraph of Section C. |
| Article 3 | All except 2nd and 3rd paragraphs. |
| Article 12 | All |
| Article 15 | All |
| Article 16 | All |
| Testimonium Clause and Signatures | All |

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,199

MISSISSIPPI RIVER FUEL CORPORATION, *Petitioner*,

vs.

FEDERAL POWER COMMISSION, *Respondent*.

**Stipulation**

Petitioner, Mississippi River Fuel Corporation (herein referred to as "Mississippi"), Respondent, Federal Power Commission (herein referred to as "Commission"), and Intervenor, United Gas Pipe Line Company (herein referred to as "United") hereby stipulate, as follows:

I.

The issues to be presented to the Court for decision herein are not susceptible of agreement between the parties.

II.

Petitioner's printed opening Brief is to be served and filed not later than July 10, 1956. Respondent's and Intervenor's Briefs are to be served and filed on or before September 11, 1956, pursuant to the Rules of the Court. Petitioner's Reply Brief is to be served and filed on September 26, 1956.

III.

Citations may be made in the briefs to the record as certified to this Court (e.g., R. 000) instead of pages to the Joint Appendix, and the Joint Appendix shall be printed with the page numbers of the record as certified to this Court, printed in bold-faced type where each new record page begins and with running heads in bold-faced

type at the outer top corner of each page of the Joint Appendix, to indicate the first and last record page of any part of which appears at the left and right of the Joint Appendix page, respectively, and with the usual numerical pagination of the Joint Appendix printed in modern (i.e., light face) type in the center of each Joint Appendix page either at the bottom or the top.

Only such portions of the record shall be printed as (a) are specifically cited by the parties in their briefs, and as (b) will be necessary to a full understanding of the portions cited in the respective briefs. The parties reserve the right to designate or to stipulate as to the portions of the record to be printed.

IV.

Petitioner will print the Joint Appendix containing the printed portions of the record as soon as all briefs have been filed. Application will be made to the Clerk of the Court at the proper time by Petitioner for transmittal for printing.

The foregoing Stipulation is agreed to.

MISSISSIPPI RIVER FUEL CORPORATION

By /s/ HENRY F. LIPPITT, 2ND
*Counsel*

FEDERAL POWER COMMISSION

By /s/ WILLARD GATCHELL
*Counsel*

UNITED GAS PIPE LINE COMPANY

By /s/ THOMAS FLETCHER
*Counsel*

No.

567

LIBRARY
SUPREME COURT

Office Supreme Court, U.S.
FILED
OCT 21 1957
JOHN T. FEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957.

No. 567

MISSISSIPPI RIVER FUEL CORPORATION,
*Petitioner,*

v.

FEDERAL POWER COMMISSION,
*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

WILLIAM A. DOUGHERTY,
SPENCER W. REEDER,
JAMES LAWRENCE WHITE,
30 Rockefeller Plaza,
New York 20, New York.

NORMAN A. FLANINGAM,
425 13th St., N. W.,
Washington, D. C.

CLEON L. BURT,
407 North Eighth Street,
St. Louis 1, Missouri,
*Counsel for Petitioner.*

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## Appendices.


Appendix A—Original Opinion of the Court Below and Dissenting Opinion of Judge Bazelon.

Appendix B—Orders of the Court Below Denying Petition for Rehearing.

Appendix C—Opinion of the Court Below in *Tyler Gas Service Company, et al,* v. *F. P. C.*

## Table of Cases.

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*Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U. S. 348 ..... 9, 11,

*Mobile Gas Service Corp.* v. *Federal Power Commission*, 215 F. 2d 883 (1954) .....

*Sierra Pacific Power Company* v. *Federal Power Commission*, 223 F. 2d 605 (1955) ..... 9, 10,

*Tyler Gas Service Co. et al.* v. *F. P. C.* (D. C. Cir. #13,623, decided August 1, 1957) .....

*United Gas Pipe Line Co.* v. *Mobile Gas Service Corp. et al.*, 350 U. S. 332 ..... 8, 9, 10, 11,

## Table of Statutes.

Federal Power Act, 49 Stat. 847, 16 U. S. C. §824 et seq. .....

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28 U. S. C., §1254(1) .....

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957.

---

**No.** .....

---

MISSISSIPPI RIVER FUEL CORPORATION,
Petitioner,

*v.*

FEDERAL POWER COMMISSION,
Respondent.

---

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Mississippi River Fuel Corporation (hereinafter sometimes referred to as "Mississippi"), Petitioner, prays that a writ of certiorari issue to review that portion of the judgment by the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled cause on July 8, 1957 affirming an order of the Federal Power Commission (hereinafter sometimes referred to as "Commission"), Respondent, refusing to give effect to the contractual arrangement between Mississippi, a natural-gas company under the Natural Gas Act (52 Stat. 821, 15 U. S. C. §717 *et seq.*) and United Gas Pipe Line Company (hereinafter sometimes referred to as "United"), also a natural-gas company.

## Opinions Below.

The original opinion of the Court below (Appendix A hereto) is reported at ..... F. 2d .....; its opinion on rehearing (Appendix B hereto) is reported at ..... F. 2d ..... The opinion and order of the Federal Power Commission affirming an order of its Trial Examiner is contained in the Appendix at App., pp. 751-786.* The decision of the Presiding Examiner is at App., pp. 807-917.

## Jurisdiction.

The original judgment of the Court of Appeals was entered July 8, 1957 (App., p. 1045). Timely petitions for rehearing were filed by Mississippi, by the Commission, and by United, an intervenor below. The judgment denying the petition for rehearing was entered on September 19, 1957 (R. 1094-1097). The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1) and §19(b) of the Natural Gas Act, 15 U. S. C. §717r(b).

## Question Presented.

Whether the Federal Power Commission may authorize and order a natural-gas company under the Natural Gas Act, unilaterally to abrogate two contracts for the sale of gas for resale at specified prices and other terms when the contracts do not provide for any unilateral filings effecting change and when neither the Commission nor its Examiner made statutory findings that the contracts should be set aside because their terms were unjust, unreasonable, unduly discriminatory, or preferential.

---

* Portions of the record were printed as a Joint Appendix in the Court below. Reference here to "App." is to such Appendix.

## Statute Involved.

Section 4 of the Natural Gas Act (52 Stat. 822, 15 U. S. C. §717(c)) provides in pertinent part:

> "(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulations, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published."

Section 5 of the Natural Gas Act (52 Stat. 823, 15 U. S. C. §717(d)) provides in pertinent part:

> "(a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or

contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates."

## Statement.

On November 8, 1955, the Commission issued an order adopting *inter alia*, the decision of one of its Examiners requiring United to abrogate two contract rate schedules providing for the sale of gas to Petitioner upon specific terms as to price, quantities and options to increase quantities (App., p. 937). Both Petitioner and United are natural-gas companies under the Natural Gas Act. United is Petitioner's largest supplier of natural gas.

The initial contract between Petitioner and United, dated August 1, 1929, provided specifically that the supply of gas should come from acreage in the Monroe (and Richland) fields of Louisiana (Articles III, XVIII; App., p. 124). During the course of time various supplements were negotiated to the contract, and in 1937 when an additional supply of gas became available to United from other fields the original contract was amended to permit United to deliver to Petitioner up to 50% of the total amount United was obligated to deliver from those fields in substitution for the gas that would otherwise come from the Monroe Field (App., p. 127). Later, in 1939, a further supplement permitted United to deliver 100%, or all, of the gas under its

contract from these other fields rather than only 50% (App., p. 128).

In 1945 the contract was amended to provide that gas could also be delivered by United to Mississippi from a new source of supply in the Carthage Field of Texas, which is approximately 147 miles from the point of delivery. It was also provided that Mississippi would advance necessary funds to United in the event that it would be necessary to increase the capacity of the line built by United from Carthage to Monroe (Article 6, App., p. 129). Under this gas purchase contract with United, Mississippi has a positive contract right to deliveries of gas by United from these fields.

By amendment made November 16, 1949 in connection with increased takes of gas from the Carthage Field, the price was fixed at 45¢ demand charge and a 5¢ commodity charge (App., p. 689).

In addition to its contract right to gas from these designated fields, Mississippi also seeks to retain in effect certain of the terms and conditions in its existing "old" gas purchase contract with United. These in effect:

1. Provide that United will supply Mississippi with such additional quantities of gas which Mississippi may nominate up to May 1, 1961, to meet Mississippi's requirements (App., pp. 682-683); and

2. Provide no minimum take-or-pay-for requirement (App., p. 474).

In 1950 United planned a major addition to its gas supplies by acquiring larger volumes at a higher price in the Gulf Coast area. Mississippi entered into another and separate new contract with United dated December 1, 1951 for 150,000 Mcf per day to be supplied from this area. The

price provided for these new supplies was $1.30 demand charge and 12½¢ commodity charge (App., p. 723).

In October 1948 the Commission had initiated an investigation pursuant to Section 5(a) of the Natural Gas Act of United's rates and charges for the sale of gas subject to the Commission's jurisdiction (App., pp. 740-741). In October, 1950, the Commission required United, as had been done by other natural gas companies, to file a restatement of its effective rates and charges in standard tariff form. This filing was made by United in July 1952 but included was a request for an increase in rates of $8,000,000 including an increase to Petitioner of $2,297,000 (App., p. 469). Prior to this filing, Petitioner was paying for gas under the two contracts as follows:

> Under the former contract 45¢ demand and 5¢ commodity, i.e. 6.47¢ per Mcf at 100% load factor (App., p. 696); and under the latter contract $1.30 demand and 12½¢ commodity for a 16.83¢ per Mcf rate at 100% load factor (App., p. 723).

In its conversion tariff United, insofar as Petitioner was concerned, sought to do three things, increase the rate payable under the older contract from a 45¢ demand and 5¢ commodity charge to a 65¢ demand and 9¢ commodity charge, an increase of $2,297,000 (App., p. 469); retain in effect the $1.30 demand and 12½¢ commodity charges in the later contract (App., p. 469); and eliminate Petitioner's right under the former contract to call upon United to supply additional quantities of gas which Petitioner may nominate up to May 1, 1961 (App., pp. 682-683). United did not seek to abrogate either contract or combine them into a single rate schedule contract. The increase case was consolidated with the investigation case and consolidated hearings were held in 1953 and 1954. An attempt was made

to agree upon a settlement of the rate issues and Petitioner and another party would not agree. As a result, the Commission provided further hearings on the issues raised by Petitioner regarding its rights under the contracts (App., pp. 807-917). The Commission issued a decision approving an Examiner's decision requiring United to file new rates to comply therewith. Petitioner had contended that it had a right to the continuance of the contractual requirements and separate rates specified in the contract rate schedules. Neither in the Commission's order affirming its Examiner nor in the Examiner's opinion was it found that Petitioner's two separate contracts for the purchase of gas with other attendant rights were illegal or that the same conflicted with the public interest. Contending that without such finding there was no warrant to change the basis of Mississippi's rates and rights under the two separate contracts, review was sought below.

The petition for review filed by Mississippi in the Court below included, among others, the following points, which had all been urged in the application made to the Commission for rehearing:

> "(4) The Commission erred in using an over-all allocated cost of service to Mississippi which failed to recognize United's widely different costs in the supply of gas to Mississippi from United's Northern and Gulf Coast Areas, and in not making a separate cost allocation for gas delivered to Mississippi from each of said areas.
>
> "(5) The finding that United operates a completely integrated natural gas system; that all of its gas resources both from nonaffiliated producers and from Union form a common pool for all the customers of United's system is not supported by substantial evidence and is against the weight of the evidence.

"(6) The Commission erred in fixing a rolled-in form of rate for sales to Mississippi which failed to take into account (i) United's prior gas sales contract commitments to Mississippi, and (ii) the widely different costs incurred in supplying these commitments.

"(7) The abrogation and modification of the terms of Mississippi's 1945 gas purchase agreement (Rate Schedule PL-3) with United so as to:

"(a) omit the provision requiring United to supply Mississippi with such additional quantities of gas as Mississippi might nominate up to May 1, 1961, to meet its requirements; and to

"(b) insert a minimum 72% take-or-pay-for provision,

are not supported by substantial evidence and are against the weight of the evidence."

The order of the Commission was remanded by the Court below upon another ground asserted by Mississippi but the majority of the Court affirmed the Commission in regard to these contractual rates and rights, Judge Bazelon dissenting.

## Reasons for Granting the Writ.

The question presented here involves a conflict in principle, at least, with decisions of this Court affirming a previous decision of the Court below and a decision of the Third Circuit as well as a decision of the Court below filed as late as August 1, 1957. There is involved in the question posed the authority of the Commission to set aside and modify contract rates and rights. In two cases, decided by this Court on the same day, *certiorari* was expressly granted because of the importance of this same question under two similar statutes. *United Gas Pipe Line Co.* v.

*Mobile Gas Service Corp. et al.*, 350 U. S. 332, 337 (involving the Natural Gas Act, *supra*); and *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U. S. 348, 352* (involving the Power Act, 49 Stat. 847, 16 U. S. C. §824 *et seq.*).

These previous determinations clearly stand for the proposition that the regulated company may not, by a unilateral rate filing, change a rate provided by contract.** A change may be effected only by mutual agreement or after a proceeding under §5(a) of the Natural Gas Act (or §206(a) of the Power Act). That the unilaterally proposed rate is reasonable does not suffice. First it is necessary, upon a proper record, to determine that the contract rate adversely affects the public interest—"as where it might impair the financial ability of the public utility to continue its service, cast upon other customers an excessive burden, or be unduly discriminatory." *Sierra Pacific*, *supra*, at 355.

As Judge Bazelon points out in his dissent below, the Commission's Examiner decided the instant case strictly on the basis of a proceeding under §4 of the Natural Gas Act (the voluntary unilateral filing provision). The Examiner made no finding as to the reasonableness of the existing contract rates but concluded that maintenance of a dual rate to Petitioner was unreasonable *per se*. While the Commission in adopting the Examiner's decision did cite §5 of the Act (the provision determined in *Mobile* to

* In the *Mobile* case, this Court affirmed the Third Circuit's decision in *Mobile Gas Service Corp.* v. *Federal Power Commission*, 215 F. 2d 883 (1954). In *Sierra Pacific* this Court affirmed the Court below in *Sierra Pacific Power Company* v. *Federal Power Commission*, 223 F. 2d 605 (1955).

** There also is involved here rights relating to calls for additional gas and maximum payment obligations. Since these also were provided by contract, the retention of these rights is in *pari materia* with the unit rate per Mcf of gas purchased.

be applicable in case of abrogation of a rate contract) this was done purely as a recital of the extent of the Commission's general rate jurisdiction (App., pp. 938-939). In any event, the necessary precedent findings to a conclusion under §5 are absent.

At first blush there is an illusory basis for the Commission order since it was concluded that the dual rate provided by contract to Petitioner was preferential. The illusion disappears upon analysis. This Court pointed out in *Mobile* that the Act "recognizes the need for private contracts of varying terms" and, further, as was done here, the Act "expressly provides for the filing of such contracts as a part of the rate schedules". 350 U. S. at 345.

It is clear from the record facts that two contracts existed because of supply needs. This brings into play exactly what this Court had in mind in *Mobile* when it said: "By preserving the integrity of contracts it permits the stability of supply arrangements which all agree is essential to the health of the natural gas industry." 350 U. S. at 344.

The Commission can change the contract relationship only upon a proper record supporting necessary findings.

> "The condition precedent to the Commission's exercise of its power under §206(a) is a finding that the existing rate is 'unjust, unreasonable, unduly discriminatory or preferential.'" *Sierra Pacific*, 350 U. S. at 353.

As this Court recognized in *Sierra Pacific*, §§4 and 5 of the Gas Act are "substantially identical" to §§205 and 206 of the Power Act.

This Court very clearly delineated the scope of the Commission's authority to alter or abrogate contract rate schedules in *Mobile* and *Sierra Pacific*. In doing so the Third

Circuit's decision in *Mobile* and the Court below's decision in *Sierra Pacific* were affirmed. Despite this delineation, the Court below in the instant case has affirmed the Commission's abrogation of two contract rate schedules despite the absence of those findings which this Court determined must be made to effect unilateral nonconsensual change.

Not only is there a conflict with decisions of this Court, and with a decision of the Third Circuit, and within the Court below, but, to add to the confusion, the Court below has subsequently decided still another case in conflict with the one at bar.

In *Tyler Gas Service Co. et al.* v. *F. P. C. et al.* (D. C. Cir. No. 13,623, decided August 1, 1957)* the Court below held that the Commission should have rejected a §4 rate filing by a natural-gas company (again United, the filing company in the instant case). In *Tyler*, as here, United had filed a tariff form of rates superseding the contract rate schedule it had with the Tyler Company. In a subsequent §4 rate change filing by United, the Tyler Company asked that the filing be rejected as contrary to the *Mobile* doctrine. The Commission refused. In reversing, the Court below held that United could not effect the unilateral nonconsensual change despite the intermediate conversion of the contract to tariff form. The case at bar cannot, in principle, be distinguished from *Tyler* as it cannot be distinguished from *Mobile* and *Sierra Pacific*. True, here Petitioner's rights arise under *two* contracts. That, however, does not distinguish the case from the standpoint of principle since the existence of the two contracts accomplished a result consistent with the regulatory act involved,

* Petition for certiorari filed at No. 320 Oct. 1957; Opinion printed as Appendix C hereto.

i.e., recognition of the needs for private contracts of varying terms.

The mere conclusion of the Examiner as to unreasonableness *per se* of dual rates is without effect since individualized contractual arrangements are *prima facie* valid rather than *per se* suspect and bad.

The Examiner erred. The Commission adopted his error. The Court below erred in failing to correct the error under this Court's opinions in *Mobile* and *Sierra Pacific*.

## Conclusion.

Since the public interest will be promoted by the prompt settlement in this Court of the issue as to whether the Federal Power Commission, despite *Mobile* and *Sierra*, may authorize and order a natural gas company under the Natural Gas Act unilaterally to abrogate two contracts for the sale of gas for resale at specified prices and other terms when the contracts do not provide for any unilateral filings effecting change, and when neither the Commission nor its Examiner made statutory findings that the contracts should be set aside because the terms were unjust unreasonable, unduly discriminatory or preferential; and

Since the holding of the Court below that the Federal Power Commission may authorize and order a natural gas company under the Natural Gas Act unilaterally to abrogate two contracts for the sale of gas for resale at specified prices and other terms when the contracts do not provide for any unilateral filings effecting change, and when neither the Commission nor its Examiner made statutory findings that the contracts should be set aside because the terms were unjust, unreasonable, unduly discriminatory or preferential, decides a Federal question in a way probably in conflict with applicable decisions of this Court;

Therefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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# APPENDIX A.*

* Printed page for page in conformity with original slip opinion as issued by the Court.

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 13199

MISSISSIPPI RIVER FUEL CORPORATION, PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT
UNITED GAS PIPE LINE COMPANY, INTERVENOR

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On Petition for Review of Order of the
Federal Power Commission

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Decided July 8, 1957

*Mr. William A. Dougherty*, with whom *Mr. Henry F. Lippitt, II*, was on the brief, petitioner.

*Mr. Louis L. DaPra*, Attorney, Federal Power Commission, of the bar of the Supreme Court of Indiana, *pro hac vice*, by special leave of Court, with whom *Mr. Willard W. Gatchell*, General Counsel, Federal Power Commission, and *Mr. Howard E. Wahrenbrock*, Assistant General Counsel, Federal Power Commission, were on the brief, for respondent.

*Mr. Thomas Fletcher*, of the bar of the Supreme Court of Texas, *pro hac vice*, by special leave of Court, with whom *Mr. C. Huffman Lewis* was on the brief, for intervenor. *Mr. Morton E. Yohalem* also entered an appearance for intervenor.

Before PRETTYMAN, BAZELON and BURGER, Circuit Judges.

PRETTYMAN, *Circuit Judge:* This is a petition to review an order of the Federal Power Commission. Two companies are involved. United Gas Pipe Line Company, which we shall call "United", is a natural gas company operating a large natural gas transmission system. It is the vendor of the gas with which we are concerned. Mississippi River Fuel Corporation, which we shall call "Mississippi", is also a natural gas company operating a transmission system. It buys from United.

Mississippi and United had two contracts. One was made in 1929. It originally provided for the sale and purchase of gas from certain designated fields at certain designated prices and contained certain other provisions which we will discuss later. It was amended from time to time until 1949. The other contract was made in 1951. It was premised upon the construction of new pipe-line facilities by United. It obligated Mississippi to a specified demand per day and established a price different from that in the old contract.

The proceeding before the Commission began in 1948 as an investigation into the rates and charges of United. The Commission ordered United to file a restatement of its rates in a "conversion tariff", and United did so. Hearings were held from time to time, and in 1954 all parties except Mississippi and another agreed to a compromise settlement. Further hearings were ordered and held concerning the issues raised by Mississippi. They culminated in November, 1955, in the order here under review.

Generally speaking, the features of the order which are attacked by Mississippi are: (1) The Commission allowed as a cost of service the full prices paid for gas by United to an affiliate wholly owned by a common parent;[1] (2) the Commission approved a rolled-in form

[1] The petitioner's application for rehearing specifically included this point. We do not read Federal Power Comm'n v. Colorado Interstate Gas Co., 348 U.S. 492, 99 L.Ed. 583,

of rate for sales to Mississippi, ignoring the prior contract commitments and the widely different costs incurred in supplying those commitments; (3) the Commission abrogated a 1945 purchase agreement (a supplement to the 1929 contract) between United and Mississippi by omitting a provision requiring United to supply such quantities of gas as Mississippi might nominate by 1961 and by inserting a minimum take-or-pay provision; and (4) the Commission directed United to file a rate schedule containing rates higher than the 1929 contract rate then on file.[2] We shall discuss these points in order.

## I

United has an affiliate, the Union Producing Company, wholly owned by their common parent. United bought in 1953, the test year, approximately 20 per cent of its gas from Union. The price was self-determined by the related companies without regulatory restriction. No cost data was submitted. In fixing the rates to be paid United by Mississippi, the Commission included the price paid Union by United as part of the cost of service.

Mississippi says the Commission erred, in that the prices paid Union were dependent only "upon the subjective feeling of United's management" and no measurement was made in this proceeding by any "objective standards". It cites a number of authorities, particularly *Western Distributing Co.* v. *Public Service Comm'n.*[3]

The Commission says that, while it is empowered to inquire into United's contract prices, it was not required

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75 S.Ct. 467 (1955), as requiring that the application for rehearing cite every case relied upon before the Court of Appeals.

[2] An increase over the original 1929 rate became effective, subject to refund, on January 3, 1953, pursuant to an interim tariff filing by United.

[3] 285 U.S. 119, 76 L.Ed. 655, 52 S.Ct. 283 (1932).

to do so and its action here was a reasonable exercise of administrative discretion. To have done otherwise, it says, would have meant a full-blown rate case against Union, vastly enlarging an already large and long-pending proceeding.

The gas sold United by Union came from some 592 wholly-owned wells and 365 partially-owned wells in numerous fields. It was bought under more than 300 contracts. What the examiner did was to compare the prices United paid to Union with the prices United paid to non-affiliated producers. He concluded that the weighted average price paid by United to its non-affiliated producers is substantially more than the weighted price paid Union by United. Thus, he said, the evidence showed that United-Union prices, judged by these objective standards, were not above a level conceded by Mississippi to be fair, just and reasonable for others. His conclusions were adopted by the Commission and held to be a sufficient basis for including the prices paid Union as part of United's cost of service.

The Commission stresses the inadvisability of a full-blown inquiry into Union's rates as a part of this proceeding. Ordinarily regulatory agencies do not inquire into the price structures of suppliers of goods to regulated utilities; they have a measure of duty to inquire into the reasonable fairness of the prices paid by the utility and to be allowed as costs in the determination of rates. But here the supplier (Union) and the utility (United) are corporate affiliates.

In this situation there are several important factors not ordinarily present. The United-Union prices were not arm's-length transactions. From time to time these prices between the two affiliates were increased. At least part of the increase authorized by the Commission in United's prices to Mississippi arose from these increases in United's payments to Union. If the United-Union increases were bona fide increases in costs incurred by

Union in acquiring gas, that would be one thing; but, if they were merely a device for siphoning potential profits from one affiliate to another, for transferring amounts from an advantage to customers to an advantage for stockholders, that is another thing. If the initial contracts between Union and its producers (some of which were wholly-owned affiliates) were fair and reasonable, the advantage thus created by their relatively low prices would belong in part at least to the customers of Union and thus to the customers of its affiliate, United; it could not be shunted by a mere intra-corporate entry into accounts available to stockholders only. A mere comparison of such prices with prevailing prices would not sufficiently justify the transactions.

The Commission's order in the case at bar was issued shortly before the opinion of this court in *City of Detroit, Michigan* v. *Federal Power Comm'n.*[4] There we reviewed an order which allowed a pipe-line company to evaluate gas produced in its own wells in terms of the "fair field" or "weighted average arm's-length" price which that gas would bring on the open market if sold by the pipe-line company in the producing area and to include the resulting amount in operating expenses to be recovered through the rates. We rejected this use of the field price, because the Commission record did not show that such an allowance was reasonably necessary to serve any stated ends of the Natural Gas Act. A 100 per cent affiliate stands in the same position as does the integrated producing "arm" of a pipe-line company. Therefore the Commission must on the record either relate the use of the weighted average arm's-length prices to legitimate ends of the Act or examine far enough to determine whether there is economic justification for the price increases paid by Union to affiliated producers.

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[4] 97 U.S. App. D.C. 260, 230 F.2d 810 (1955).

We emphasize that we are dealing with a single corporate structure, which includes the parent, the two affiliated transmission subsidiaries (supplier and customer to each other), and the producers. We think the Commission must at least inquire into the reality of the price increases paid by Union to its wholly-owned and partly-owned affiliate producers, which increases were in part reflected in the United-Union prices. By this we mean that to include the increased prices in the costs of United the Commission must at least determine that the increases had sufficient factual economic justification; it must ascertain that they were not mere bookkeeping or intra-corporate-system adjustments. We must remand the case for that inquiry. We do not hold that a full-blown inquiry into the rates of Union is necessary. Subsequent developments in the proceeding may or may not indicate such a necessity.

II

Mississippi says its contracts with United require a separate determination of rates under each contract. It says that, until the Commission determines, upon a proper record, the public interest requires abrogation of the contracts, the separate contractual basis must be maintained. This result, it says, is required by the decisions in the *Mobile*[5] and *Sierra Pacific*[6] cases.

The so-called "old contract", the one of 1929, originally named the fields from which the purchased gas was to come. It named a price, later raised until it was a forty-five-cent demand charge and a five-cent commodity charge. Amendments to the contract in 1945 and 1949 did not repeat the field designation but merely specified that the gas be transported through a desig-

[5] United Gas Co. v. Mobile Gas Corp., 350 U.S. 332, 100 L.Ed. 373, 76 S.Ct. 373 (1956).

[6] Federal Power Comm'n v. Sierra Pacific Power Co., 350 U.S. 348, 100 L.Ed. 388, 76 S. Ct. 368 (1956).

nated pipe line proposed to be constructed by United from the Carthage field in Texas to a named point (Sterlington) in Louisiana. This amendment was intended by the parties, the examiner found, to assure systemwide availability of gas for Mississippi. The so-called "new contract" of 1951 did not specify the source fields of the gas to be purchased under it.

Evidence was presented to show, and the Commission found, that United's properties are integrated and interconnected and that the two lines from Sterlington to Perryville, the sole delivery point to Mississippi, were tied into all sources of supply running into the Monroe District. The Commission found that allocation to separate lines and sources of supply solely for Mississippi was not feasible, that the gas was commingled before delivery to Mississippi, and that continuance of two rates for the same service at the same point was not in the public interest and would result in unreasonable differences.

The Commission fixed a single rate of seventy-five-cent demand and ten-cent commodity charge for all sales to pipe-line companies in the Central Rate Zone served from United's transmission system. The rate under the "old" contract with Mississippi had been forty-five cents and five cents and under the "new" contract a dollar and thirty cents and twelve and a half cents. The net result of the single "rolled-in" rate is computed to be an increase in rates to be paid United by Mississippi of some $1,350,000 a year[7] over pre-investigation rates.

The Commission has power under Section 5(a) of the

[7] The Commission makes reference in its brief to an annual reduction of nearly $1,000,000. But that was computed on the basis of an increase allowed to be put into effect by United, subject to refund, during the proceeding. That tentative increase became effective January 3, 1953. It is part of the total result here under dispute.

Natural Gas Act[8] to determine a just and reasonable rate or contract affecting rates whenever it finds that an existing rate or contract affecting rates is unjust, unreasonable, unduly discriminatory, or preferential. In the case at bar the findings of the Commission were that the two rates on the separate contracts "are not in the public interest", that the continued existence of two rate schedules would constitute "maintenance of an unreasonable difference", and that compliance with Section 4 of the Act would be effected by a filing by United which would "eliminate unjust, unreasonable and unduly discriminatory rates to Mississippi" and would apply to Mississippi the same rates applicable to other customers. We think these findings adequately met the statutory prescription for underlying findings in Section 5(a).

We get the impression that Mississippi does not contest too strenuously the result of the Commission's order in dollars at this point but that the thrust of its argument is that it is entitled to the maintenance of its two contracts with separate rates rather than a single rate for all purchases. It does not specifically proclaim its disinterest in the dollar result, but it prepared and presented an exhibit which seemed to show that a seventy-five-cent demand and a nine-cent commodity charge under the "old" contract and a dollar-and-fifteen-cent and ten-cent charge under the "new" would yield the same amounts.

Mississippi makes two principal claims of damage to it. It claims that the single rate hurts it more than it hurts other purchasers from United since a larger proportion of its purchases were under the older, lower contract rates whereas the greater part of the others' purchases were under newer, higher contract rates. Again, the commodity price in the single rate is twice that in the old contract rate, and Mississippi claims that,

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[8] 52 STAT. 823 (1938), 15 U.S.C.A. § 717d(a).

because rates to interruptible industrial consumers are pegged largely on the commodity rate, the doubled rate is particularly injurious to that phase of Mississippi's operations. Sales direct to industry are not regulated by the Commission, but it can influence these rates by its allocation of costs to industrial business as part of its determination of rates over which it has jurisdiction. A low commodity rate would enable Mississippi to meet competition from other fuels without jeopardizing its profits from its jurisdictional sales. These seem to be the principal reasons for Mississippi's opposition to the single rate. While they are potent from the standpoint of that company, they do not avail too much from the standpoint of general regulation and the public interest.

Mississippi argues that the Commission was required by the *Mobile* and *Sierra Pacific* cases, *supra*, to find specifically that the old contract rate of forty-five cents and five cents was itself unlawful before it could order it changed. Those cases each dealt with a single existing contract. The Court held that before the Commission could cause such a contract rate to be raised it must make the findings required by the statute. In the case at bar there are two existing contracts, one with a low rate and the other with a high one. The Commission did not find specifically that the low rate was unreasonable, etc. It found that the two contracts, with two rates, were not in the public interest and would maintain an unreasonable difference. It seems to us that the action of the Commission was within the scope of the statute and within the doctrine of the *Mobile* and *Sierra Pacific* cases, even though not within the factual bases of those opinions. We think that in a situation involving two contracts, at different prices, for different portions of a single service, it is within the power of the Commission to combine the two contracts even though the combination results seemingly in a technical breach of the contractor's or the public's rights under the lower priced of the two contracts.

We think the record amply supports the Commission's conclusion that the two separate rates under the "old" and "new" contracts between United and Mississippi should give way to the single rate applicable to all customers. We affirm its order on that point.

## III

Mississippi says the Commission erred in omitting an "old" contract provision requiring United to supply it with additional quantities of gas. The amendment of 1945 to that contract provided that any time prior to May 1, 1961, Mississippi could call upon United for increased quantities of gas and thereafter United would furnish such increased amounts. In 1949 Mississippi requested United to supply 65 per cent of its requirements instead of the prior 49 per cent, and United complied. When United filed the tariff which became the basis for the Commission's present order, it omitted that clause of the contract, and the Commission approved the omission.

Mississippi says the omission is seriously prejudicial because United has always been the "backbone" of its source of supply and its right until 1961 to require United to supply its additional requirements is an integral part of its plans and a basis of reliance by its customers for an adequate supply. It says that under the Commission's regulations United could not unilaterally abrogate the clause in question.

The Commission says the clause accorded Mississippi a preferential right over all other customers of United and should therefore be eliminated. It says the omission was proper under the regulation.[9] It says that United could not possibly obligate itself to satisfy the full future requirements of Mississippi, let alone all of its customers.

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[9] 18 C.F.R. § 154.85.

The Commission further says the contract clause in question did not mean what Mississippi claims it meant but meant only that Mississippi could make one nomination of additional supply. It says this interpretation of the contract is demonstrated by Mississippi's own conduct: in 1950, when it needed more gas, it purchased from independent producers, and again in 1951, when it again needed more gas, it made a new contract with United instead of exercising the right it now says it had under the existing contract. This conduct, says the Commission, is inexplicable under Mississippi's present reading of the contract clause. Lastly, the Commission says if the clause meant what Mississippi claims it meant it would be within the plenary power of the Commission under Section 7(c) of the Act as amended.[10]

Without considering all the various contentions on the point, we think the clause in question, in the presence of dual contract rates, would create a discriminatory preference and therefore could properly be omitted from the approved tariff. Since we have approved the Commission's order eliminating the rate differential, the point loses much of its importance. We affirm the Commission's order on this point.

The Commission included in United's tariff a 72 per cent minimum take-or-pay clause. This would require Mississippi to pay a commodity charge measured by 72 per cent of the maximum daily quantity. The same requirement was imposed upon all of United's customers. Mississippi's objection is that this could have a very adverse effect, "if in a depressed business condition or a bad competitive position we were unable to sell as much gas as would be required to keep that old contract at 72 percent."

We think Mississippi's fears are not sufficient basis for a differentiation between it and all other customers

[10] 56 STAT. 83 (1942), 15 U.S.C.A. § 717f(c).

We accept at full value the Commission's assurance that "if, in the future, the provision should be considered by petitioner to be, in fact, onerous to it, the Act provides relief." Upon that basis we affirm the Commission on this point.

IV.

As we have already pointed out, the rates under Mississippi's "old" contract, after the increase of January 3, 1953, were sixty-five cents demand and nine cents commodity. The over-all rate ordered by the Commission was seventy-five cents and ten cents. Mississippi says this was an increase in rates forbidden by Section 5(a) of the Act.[11] It says the Commission virtually, if not actually, ordered United to file the new schedule. Section 5(a) provides in pertinent part:

> "That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; * * *."

As we have seen, while the rates authorized by the Commission were higher than those in the "old" United-Mississippi contract, they were lower than those in the "new" contract. The whole action was to substitute a single rate for two separate rates found by the Commission to be unduly preferential. The Commission had a positive duty under the basic provisions of Section 5(a) to eliminate preferential discriminations. While the dollar amount of the charges authorized by the Commission was greater than the amount of the contract rates, it was less than the dollar amount shown by the conversion tariff filed by United and effective January 3, 1953. United's tariff would have increased the charges to Mis-

[11] *Supra* note 7.

sissippi by some $2,300,000. The eventual increase under the Commission's order was, as we have noted, some $1,350,000.

We think the above-quoted proviso in Section 5(a) did not prohibit the Commission from eliminating the dual-rate structure of the two separate contracts when it found that system to be unduly preferential. Any over-all rate substitute would necessarily have to be higher than the very low rate of the "old" contract and higher even than that rate as adjusted in January, 1953. The increase in that rate was merely an essential part in the elimination of the dual-rate structure. We think it was authorized by Section 5(a) taken as a whole and as applied to the peculiar circumstances of this case. We agree with the Commission on this point.

Because of the necessity for further findings on Point I the Commission's order will be vacated and the case remanded for further proceedings.

BAZELON, *Circuit Judge*, concurring in part and dissenting in part: I agree that the order under review must be vacated for the reason stated in Part I of Judge Prettyman's opinion. But, from the balance of the opinion, holding the order otherwise proper, I am compelled to dissent.

The Commission's order, in effect, if not in terms, authorized United unilaterally to abrogate its two contracts with Mississippi, replacing them by new rates and conditions—or, at least, to reform the two contracts. My brethren conclude that the Commission had the power to do what it did under § 5(a) of the Natural Gas Act and that it made the findings required by that section to support its action. I agree that § 5(a) gives the Commission authority "to set aside or modify any rate or contract which it determines, after hearing, to be 'unjust, unreasonable, unduly discriminatory, or preferential.' ". *United Gas Co.* v. *Mobile Gas Corp.*, 350 U.S. 332, 341

(1956). I do not agree, however, that the Commission made the findings necessary to support an exercise of § 5(a) power.

The Supreme Court held in *Mobile*, *supra*, that a utility may not, by filing a new rate under § 4 of the Natural Gas Act, unilaterally change a rate to which it has bound itself by contract. The contract rate remains in force until the parties change it by agreement or until the Commission, after hearing under § 5(a), determines it to be unreasonable. A Commission determination that the unilaterally proposed new rate is a reasonable one does not amount to a determination that the old rate is unreasonable. *Federal Power Comm'n* v. *Sierra Pacific Power Co.*, 350 U.S. 348, 354-55 (1956).[1] If the contract rate is to be determined to be illegal, it must be upon a finding, supported by evidence, that the rate adversely affects the public interest—"as where it might impair the financial ability of the public utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory." *Id.* at 355.

Here there are two contract rates. United's conversion tariff proposed a continuation of a two-rate schedule, but an increase of the rate specified in the earlier of the two contracts. The Commission rejected this proposal and ordered filing of a single rate, higher than the rate of the first contract and higher even than the rate to which United proposed to increase it,[2] but lower than

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[1] Affirming our decision in *Sierra Pacific Power Co.* v. *Federal Power Comm'n*, 96 U.S.App.D.C. 140, 223 F.2d 605 (1955). We there pointed out, citing *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 251 (1951), that "[s]ince 'statutory reasonableness is an abstract quality represented by an area rather than a pinpoint,' the statutory purpose may be satisfied by more than one rate." 96 U.S.App.D.C. at 142, 223 F.2d at 607.

[2] Mississippi argues that, since § 5(a) forbids the Commission to order a rate increase "unless such increase is in

the rate of the second contract.

The Commission's order adopted the examiner's Initial Decision of July 18, 1955, with a modification to which I shall refer later. That decision, which occupies 111 pages in the joint appendix, culminates in 24 combined "Findings and Conclusions." In No. 2, the examiner declared that "United's rates, charges, classifications, and services . . . are subject to the jurisdiction of the Federal Power Commission *under the provisions of Section 4 of the Natural Gas Act.*"[3] In No. 17, he found the "just and reasonable" rates to be those earlier agreed upon in the settlement to which Mississippi was not a party, such rates being "the same as made to all other pipe-line customers served from United's transmission system in the Central Rate Zone." In No. 19, he said that to have two rates to Mississippi would "constitute the maintenance of an unreasonable difference in rates and charges for the same service at the same delivery point, contrary to the provisions of *Section 4(b) of the Natural Gas Act.*" Finally, in No. 20, he declared that "[c]ompliance with *Section 4 of the Natural Gas Act* will be effected by the making of a filing by United which will eliminate unjust, unreasonable and unduly discrim-

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accordance with a new schedule filed by such natural gas company . . . ," the order is invalid with respect to the gas purchased under the first contract. But, as the Supreme Court said in *Mobile*, "if the Commission, after hearing, determines the contract rate to be so low as to conflict with the public interest, it may under § 5(a) authorize the natural gas company to file a schedule increasing the rate." 350 U.S. at 345. The order here, instead of *authorizing* the filing of a new schedule, *orders* it. Since it is obvious that United wishes to file such a schedule, the use of "order" instead of "authorize" is in this case insignificant. Hence, if the Commission had made a § 5(a) determination to support its order, I would have no difficulty sustaining the order.

[3] Emphasis supplied throughout.

inatory rates to Mississippi and which will apply to Mississippi the same rates which are now applicable to all its other pipe-line customers served from United's transmission system in the Central Rate Zone."

A fair reading of the Initial Decision supports the following observations:

*Item 1*—The examiner treated the proceeding before him as one under §4 to determine the reasonableness of proposed new rates; not one under §5(a) to determine the reasonableness of existing rates.

*Item 2*—He made no findings as to the reasonableness of the existing rates.

*Item 3*—He concluded that the proposed rates to Mississippi, to be reasonable, must not be different from the rates to United's other customers in the same rate zone.

*Item 4*—He concluded that maintenance of dual rates to a single customer for the same service at the same point is unreasonable *per se*.[5]

Items 1 and 2 above are, in my view, enough to call for reversal of the Order under the decisions in *Mobile* and *Sierra, supra*.[6] It is true that the Commission, in adopting the examiner's decision as its own, did seek

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[5] The Commission also relies upon the examiner's Finding and Conclusion No. 13 that all gas delivered by United to Mississippi was commingled before delivery, so that a two-rate system was not feasible. To the extent that this is a finding, rather than a conclusion, it completely ignores the facts that (1) as of the date of the Commission's order United was in fact delivering gas to Mississippi on a two-rate schedule; and (2) United's proposal was for a continuation of a two-rate schedule. What metering system was employed by the parties to compute payments does not appear. That there was a system which they considered feasible seems clear.

[6] I would hold the Commission's order as ineffective to change the other terms of the contract, referred to in Part III of Judge Prettyman's opinion, as it is to change the rates.

to bring it within *Mobile* and *Sierra*[1] by amending Finding No. 2 to cite § 5 of the Natural Gas Act, as well as § 4. This afterthought cannot suffice, however, for the findings which would be necessary to support a § 5 determination are altogether lacking. See *Sierra Pacific Power Co.* v. *Federal Communications Comm'n*, 96 U.S. App. D.C. at 144, 223 F. 2d at 609.

Even if Items 1 and 2 were not enough to dispose of this case and we were required to address ourselves to the sufficiency of the determinations referred to in Items 3 and 4, I would hold that they do not support the order.

As to Item 3, I think the Supreme Court pointed out clearly enough in *Mobile* that mere difference in rates between customers is not unreasonable under the Natural Gas Act, as it is under the Interstate Commerce Act. "The Natural Gas Act . . . recognizes the need for private contracts of varying terms and expressly provides for the filing of such contracts as a part of the rate schedules." 350 U.S. at 345.

Similar considerations, I think, apply to Item 4. If the nature of the industry is such as to cause a gas buyer to make a long-term contract with a pipe-line for his requirements, it seems obvious that the buyer may revise his conception of his future requirements and seek to contract for additional gas and the seller, in those circumstances, may ask a higher price under the new contract. There is as little wrong with two contract rates to one customer as with different contract rates to different customers. Any of these rates may be stricken as unreasonable, if found so to be in a proceeding under § 5(a). But, in neither case are the rates unreasonable *per se*.

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[1] *Mobile* and *Sierra* had not yet been decided by the Supreme Court when the initial and final decisions in this case were issued. Both cases had, however, been decided by the respective circuit courts of appeals.

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

April Term, 1957.

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No. 13,199.

MISSISSIPPI RIVER FUEL CORPORATION, PETITIONER,

v.

FEDERAL POWER COMMISSION, RESPONDENT,

UNITED GAS PIPE LINE COMPANY, INTERVENOR.

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Before: EDGERTON, Chief Judge, PRETTYMAN, WILBUR K. MILLER, BAZELON, FAHY, WASHINGTON, DANAHER, BASTIAN and BURGER, Circuit Judges, in Chambers.

## ORDER.

Upon consideration of petitioner's petition for a rehearing *en banc*, it is

ORDERED by the Court that the aforesaid petition be, and it is hereby, denied.

Per Curiam.

Dated: September 19, 1957.

Circuit Judge Washington did not participate in the foregoing order.

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

April Term, 1957.

---

No. 13,199.

MISSISSIPPI RIVER FUEL CORPORATION, PETITIONER,

v.

FEDERAL POWER COMMISSION, RESPONDENT,

UNITED GAS PIPE LINE COMPANY, INTERVENOR.

---

Before: PRETTYMAN, BAZELON and BURGER, Circuit Judges, in Chambers.

## ORDER.

Upon consideration of petitioner's petition for rehearing and clarification of the opinion of this Court, of respondent's petition for rehearing and clarification of the opinion of this Court, and of intervenor's petition for rehearing, it is

ORDERED by the Court that the aforesaid petitions for rehearing be, and they are hereby, denied.

It is FURTHER ORDERED by the Court that insofar as petitioner petitions for clarification of the opinion of this Court and respondent petitions for clarification of the opinion of this Court, said petitions be, and they are hereby, granted and that that portion of the opinion promulgated July 8, 1957, beginning "In this situation there are several", near the bottom of page 4 of the slip print, and continuing to the end of part I of the opinion, is amended to read as follows:

In this situation there are several important factors not ordinarily present. The United-Union prices were not arm's-length transactions. From time to time these prices between the two affiliates were increased. At least part of the increase authorized by the Commission in United's prices to Mississippi arose from these increases in United's payments to Union. If the United-Union increases were bona fide increases in costs incurred by Union in acquiring gas, that would be one thing; but, if they were merely a device for siphoning potential profits from one affiliate to another, for transferring amounts from an advantage to customers to an advantage for stockholders, that is another thing. If the initial contracts between Union and United were fair and reasonable, the advantage thus created by their relatively low prices would belong in part at least to the customers of United; it could not be shunted by a mere intra-corporate entry into accounts available to stockholders only. A mere comparison of such prices with prevailing prices would not sufficiently justify the transactions.

The Commission's order in the case at bar was issued shortly before the opinion of this court in *City of Detroit, Michigan* v. *Federal Power Comm'n.*[4] There we reviewed an order which allowed a pipeline company to evaluate gas produced in its own wells in terms of the "fair field" or "weighted average arm's-length" price which that gas would bring on the open market if sold by the pipeline company in the producing area and to include the resulting amount in operating expenses to be recovered through the rates. We rejected this use of the field price, because the Commission record did not show that such an allowance was reasonably necessary to serve any stated ends of the Natural Gas Act. A 100 per cent affiliate stands in the same position as does the integrated producing "arm" of a pipeline company. Under the doctrine of the *City of Detroit* case United could not, on the record as it is now before us, use as costs the fair field price of gas produced by its affiliate, Union; a reconsideration by the Com-

[4] 97 U.S. App. D.C. 260, 230 F.2d 810 (1955).

mission under the principles laid down in that case would be necessary.

But United did not seek to use fair field prices; it used contract prices fixed in contracts with its affiliate, and measured the reasonableness of those contract prices by the fair field prices. From time to time the affiliated contractors increased the prices applicable to sales between them. We think the Commission could no more test the reasonableness of interaffiliate prices by the use of fair field prices (without more) than it could allow as costs the fair field prices (without more). To be included in United's costs, increases in the interaffiliate prices must have some factual economic justification. By way of extreme example, if Union's production and delivery costs remained static and it increased its prices to United, that much of the corporate-system revenues would be shunted from United to Union. If, in this example, the full new prices were allowed as costs to United, one of two results would ensue. If United's prices to its customers had been yielding no more than a fair return, those prices would have to be increased to compensate for the increased costs. If United's prices had been yielding more than a fair return, so that a reduction in those prices was a possibility, that reduction would be forestalled by the increase in costs. Thus, by the allowance, in our example, of the increased Union-United prices as costs of United, the amount of the increase would be shunted from a potential benefit to the corporate-system customers (direct customers of United) to a benefit to the corporate-system stockholders. To a less extent any increase in the interaffiliate prices (Union-United) not reflecting increases in Union's costs or expenses would represent a shunting of benefit from customers to stockholders. We do not say that all benefits, in total amounts, due to initial advantageous arrangements at the wells or to astute original operational arrangement belong to the customers and none to the stockholders. But we do say that the whole of such benefits, as measured by increasing fair field prices, cannot be assigned to the stockholders by unexamined increases in interaffiliate prices accepted as costs of the affiliate-purchaser.

The same course of reasoning which we followed in the *City of Detroit* case is applicable here. Therefore we think the Commission must at least inquire into the factual justification for the price increases paid by United to Union. By this we mean that to include the increased prices in the costs of United the Commission must at least determine that the increases were justified by reason of Union's costs or by reason of some other stated end of the Natural Gas Act; the Commission must ascertain that they were not mere bookkeeping or intra-corporate-system adjustments. We must remand the case for that inquiry. We do not hold that a full-blown inquiry into the rates of Union is necessary. Subsequent developments in the proceeding may or may not indicate such a necessity.

Per Curiam.

Dated: September 19, 1957

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 13,623

TYLER GAS SERVICE COMPANY, and
CITY OF TYLER, TEXAS, PETITIONERS

v.

FEDERAL POWER COMMISSION, RESPONDENT

UNITED GAS PIPE LINE COMPANY, INTERVENOR

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On Petition for Review of Orders of the
Federal Power Commission

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Decided August 1, 1957

*Mr. Bryce Rea, Jr.*, and *Mr. Thomas K. Ramey* of the bar of the Supreme Court of Texas, *pro hac vice*, by special leave of court, with whom *Mr. Donald E. Cross* was on the brief, for petitioners.

*Mr. Louis L. DaPra*, Attorney, Federal Power Commission, of the bar of the Supreme Court of Indiana, *pro hac vice*, by special leave of court, with whom *Messrs. Willard W. Gatchell*, General Counsel, Federal Power Commission, *Howard E. Wahrenbrock*, Solicitor, Federal Power Commission, and *W. Russell Gorman*, Assistant General Counsel, Federal Power Commission, were on the brief, for respondent.

*Mr. Thomas Fletcher*, with whom *Mr. C. Huffman Lewis* was on the brief, for intervenor.

*Mr. William C. Chanler*, with whom *Mr. Lawrence A. Baker* was on the brief, for McMurrey Refining Company, as *amicus curiae*, urging reversal.

Before BAZELON, WASHINGTON and BASTIAN, Circuit Judges.

BASTIAN, *Circuit Judge:* This proceeding is to review an order of the Federal Power Commission (hereinafter called the Commission) denying a motion of Tyler Gas Service Company (hereinafter called Tyler Gas) for refund of sums paid to intervenor, United Gas Pipe Line Company (hereinafter called United), and two joint petitions by Tyler Gas and the City of Tyler to reject rate schedules filed by United to increase rates specified in a contract between Tyler Gas and United.

The record discloses that the franchise of Tyler Gas as distributor of natural gas for the City of Tyler was to expire in 1946. In that year, natural gas was in abundant supply in the vicinity of the City of Tyler, by reason of the proximity of a number of producing fields. As the expiration of the Tyler Gas franchise neared, a group of citizens appeared before the Tyler City Commission with the proposal that the franchise be not renewed, that a new distributing company be organized, which would procure its gas from new sources at a price less than Tyler Gas paid United, its supplier, and suggesting that greatly reduced rates thus might be made available to the consumers. The City Commission was quite receptive to this proposal and, for a period of several months, had it under consideration.

Tyler Gas wished its franchise renewed, and United was anxious to retain this market for its product. After considerable negotiation, United consented to a reduction in price to Tyler Gas for domestic consumption, from

22½¢ to 12¢ per MCF, if the City of Tyler would renew the Tyler Gas franchise. A new franchise was prepared, specifying the rates to be charged consumers, the rates being predicated on a rate of 12¢ per MCF from United to Tyler Gas for domestic and 80% of the amount received by Tyler Gas, though in no event less than 7.2¢ per MCF for industrial gas.

On April 3, 1946, United addressed a letter to the City of Tyler wherein United agreed that such rates would be the maximum rates which United would charge Tyler Gas for a period of sixteen years. In reliance on the representation of United, the proponents of the new and competing company withdrew the application for its franchise, the City of Tyer renewed the franchise of Tyler Gas for a period approximating the life of the contract, and the original contract between United and Tyler Gas was amended accordingly. The amended contract was to run until 1962.

By the Commission's Order No. 144, dated October 30, 1948, it was provided that existing rate schedules, which set forth rates in terms of percentages of receipts, should be replaced by schedules setting forth the rates in terms of dollars and cents per unit. This order was issued to bring all rate schedules in line insofar as terms of dollars and cents per unit were concerned, and was not the result of independent action on the part of United, Tyler Gas or the City of Tyler. On July 30, 1952, United filed with the Commission a so-called "conversion tariff," in accordance with Order No. 144.

The contract with Tyler Gas covered both industrial and domestic sales. The conversion tariff slightly increased the rate on industrial sales and decreased it on domestic sales, with a resultant small increase in the rates at that time being paid under the contract.

On June 24, 1953, United filed schedules of increased rates for both domestic and industrial gas and, on July 10, 1953, the Commission issued an order suspending the

increased rates for five months, pending a hearing. This suspension did not apply to rates applicable to sales for industrial use only. Tyler Gas intervened in the proceedings and opposed the rates.

In December 1953, Tyler Gas and the City of Tyler filed a complaint with the United States District Court for the Eastern District of Texas, seeking a preliminary injunction to restrain United from putting its increases into effect, and for declaratory judgment declaring the contracts to be valid and existing. The District Court denied the application for preliminary injunction and, on motion of United, dismissed the complaint. The United States Court of Appeals for the Fifth Circuit affirmed. *Tyler Gas Service Co.* v. *United Gas Pipe Line Co.*, 217 F.2d 73 (1954).

During the pendency of the proceedings in the Fifth Circuit, hearings were held for the purpose of considering a proposal for settlement of United's schedule of general rate increases, and Tyler Gas requested that this settlement remain open for the determination of the issues raised in the petition to intervene by Tyler Gas. This was done.

Following the decision by the Supreme Court in the *Mobile* case,[1] Tyler Gas filed a motion for refund of the amounts United had been collecting pursuant to the order of the Commission dated January 25, 1954, and later filed, jointly with the City of Tyler, petitions to reject two schedules for further rate increases filed by United subsequent to the January 25, 1954, order of the Commission. The Commission denied the motion and the joint petitions, holding that the *Mobile* case was not applicable and that Tyler Gas had no rights under its contract, which, by its terms, ran until 1962. The basis of the Commission's decision was (1) that the case could be distinguished from the *Mobile* case, and (2) that the

[1] *United Gas Co.* v. *Mobile Gas Corp.*, 350 U.S. 332 (1956).

action of the Circuit Court of Appeals for the Fifth Circuit was *res judicata* insofar as Tyler Gas was concerned.

The questions presented on this appeal are two: first, is this case distinguishable from the *Mobile* case; and, second, was the judgment of the Fifth Circuit in the prior litigation *res judicata?* Our answer to both questions is in the negative.

Respondent's position that this case is distinguishable from *Mobile* is based on the contention that the United conversion tariff, filed pursuant to Commission Order No. 144, was a unilateral change in the contract rates as to Tyler Gas, and that from the time of that change the contract did not bar further unilateral increases in rates. Particular reliance is placed on the fact that the conversion tariff effected some upward change in the cost of natural gas supplied to Tyler Gas by United. From this, respondent argues that Tyler Gas had no binding contractual rights to any rate and that United, by filing with the Commission a higher rate schedule, could unilaterally increase the price of gas to Tyler Gas. This, it is said, makes inapplicable the decision in *Mobile* that the Natural Gas Act, 15 U.S.C. § 717 (a)-(w) (in particular, § 4 (d)), confers no power to effect changes in contracts by unilateral action. According to respondent, at the time the rate increases were filed here there was no longer a right to obtain gas at any contract price.

In the *Mobile* case, United had a contract with Mobile to furnish gas for a certain industrial user at a certain percentage of the sale price paid Mobile by the user. Under Commission Order No. 144, United was directed to and did file a conversion tariff, which the Third Circuit found " . . . *almost* identical with the amount the Mobile percentage rate actually figured." [Emphasis supplied.] *Mobile Gas Service Corp.* v. *Federal Power Commission*, 215 F.2d 883, 884 (3d Cir. 1954), *aff'd*, 350 U.S. 332 (1956). Mobile acquiesced in the conversion tariff and

was thereafter billed at and paid the conversion rate until United applied for an increase in its industrial rates and the Commission ordered the increased rate paid. It was this increased rate, absent a finding that the contract rate was in conflict with the public interest, which the Supreme Court ruled a nullity. This is exactly the case before us.

The fact that the conversion tariff acquiesced in by Tyler Gas slightly changed the cost to it, as compared to the original contract percentage rate, cannot distinguish this case from Mobile,[2] for there the converted tariff did not result in cost *identical* to that under the original contract. The Third Circuit, in the *Mobile* case, regarded the conversion tariff as becoming a part of an unchanged contract. See 215 F.2d at 891, n. 16. This is plainly right. The fact that Tyler Gas inferentially consented to a slightly higher cost of gas in the conversion tariff filed pursuant to Commission Order No. 144 is no basis for saying that it has agreed to be bound by later unilateral rate increases. Tyler Gas has never abandoned its contract; the contract has not been mutually rescinded. So long as Tyler Gas has a valid, subsisting contract with United, the cost of gas cannot be unilaterally varied unless the Commission first finds that the contract rate is in conflict with the public interest. The rules of the Commission itself support the view that modification of a contract does not abrogate it. This is clear from 18 C.F.R. § 154.85 (1949), which reads as follows:

> "*Status of contracts filed as rate schedules and restated.*

[2] There is some disagreement between the parties as to the amount of the higher cost under the conversion tariff. Tyler Gas tells us it was a difference of $2,690.88, or 1%, while respondent claims the difference was $7,900.00, or 3%. The data to determine which figure, if either, is correct is not before us, even if we were interested in computing the difference.

> Each contract, which is now filed as an effective rate schedule, may be continued in effect and shall be considered as an executed service agreement to the extent that the provisions thereof are not superseded by or in conflict with other applicable provisions of the rate schedules and general terms and conditions of the tariff, until such contract expires by its presently provided terms or is replaced by an executed service agreement in a form contained in the tariff: *Provided, however*, That the natural-gas company, concurrent with the filing of the tariff, shall submit, for insertion in front of each such contract, a statement identifying the provisions thereof which are not superseded by or in conflict with other applicable provisions of the rate schedules and general terms and conditions of the tariff and which are to remain in effect: *Provided further, however*, That agreements intended to effect a change or amendment in such contract may be made only by the execution of a form of service agreement contained in the tariff."

The Supreme Court has decided, in the *Mobile* case, that the Natural Gas Act does not permit unilateral changes in rate contracts. This is exactly what respondent has permitted to be done here. We can find no sound basis in fact or principle to distinguish this case from *Mobile*.

For the above reasons, we conclude that the answer to the first question presented in this case must be "No."

II

There is no occasion for lengthy comment as to our conclusion on the second question before us. A decision dismissing a complaint for lack of jurisdiction cannot be *res judicata* as to the substantive merits of the complaint. *Hughes* v. *United States*, 71 U.S. 232 (1866).

Our view of the decision in *Tyler Gas Service Co.* v. *United Gas Pipe Line Co.*, *supra*, is that dismissal of Tyler Gas' complaint was based on a lack of jurisdic-

tion to grant equitable relief as to matters then pending before an administrative agency empowered to regulate natural gas rates, and to afford an adequate remedy. Whatever the purpose of the comments of the Fifth Circuit and the District Court on the merits of the action, we think that both quite properly decided the case on the basis of jurisdiction. The Fifth Circuit regarded the District Court's holding to be " . . . that plaintiffs must, therefore, seek such relief as they may be entitled to under the statute from the commission and not from the court." 217 F.2d at 76. In its opinion (p. 77), the court stated: " . . . the commission is empowered under and in accordance with the terms of the Act to afford relief and that any relief due the plaintiff must be sought from the commission and under and in accordance with the Act." Later in its decision, the court recites:

> "Assuming without deciding, that the opinion of the majority is right, that of Judge Hastie, the dissenting member, is wrong [in the *Mobile* case], we think it plain that the opinion does not conflict with, that indeed it supports and confirms, the views of the district judge: that 'any relief to which plaintiff may be entitled in the premises must be secured through action of the commission and not of this court. The commission is amply empowered to give adequate relief. . . .'"

We cannot see how a decision that a party must seek relief before an administrative agency can be *res judicata* of the merits of the agency's later denial of the relief requested.

The order denying the motion of Tyler Gas for refund is reversed. The order denying the petitions to reject the rate schedules filed by United are likewise reversed.

Because of the disposition we make of this case, no other matters briefed or argued need be discussed.

No.

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IN THE

# Supreme Court of the United States

No. 567

OCTOBER TERM, 1957

MISSISSIPPI RIVER FUEL CORPORATION,
*Petitioner,*

v.

FEDERAL POWER COMMISSION AND
UNITED GAS PIPE LINE COMPANY,
*Respondents.*

## BRIEF OF UNITED GAS PIPE LINE COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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November 20, 1957

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IN THE

# Supreme Court of the United States

No. 567

OCTOBER TERM, 1957

MISSISSIPPI RIVER FUEL CORPORATION,

*Petitioner,*

v.

FEDERAL POWER COMMISSION AND
UNITED GAS PIPE LINE COMPANY,

*Respondents.*

## BRIEF OF UNITED GAS PIPE LINE COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

## COUNTER-STATEMENT OF FACTS

On July 3, 1952, at G-2019, United[1] filed notice of increased rates to certain pipe line companies, including Petitioner (R. 987-9). The Commission suspended and ordered hearing pursuant to Section 4(e) of the Act (R. 991). The increased rates became effective subject to refund (R. 1006).

The increased rates were for service to Petitioner rendered by filed contract dated August 1, 1929, and amendments (R. 644, et seq), which were converted to tariff form, also filed at G-2019 pursuant to Regulations in Part 154, promulgated by Commission Order 144.

[1] In this *Brief* Petitioner Mississippi River Fuel Corporation will be referred to as *Petitioner*, Respondent Federal Power Commission will be referred to as *Commission*, Respondent United Gas Pipe Line Company will be referred to as *United*. The Natural Gas Act will be referred to as the "Act". (Act of June 21, 1938, c. 556, 52 Stat. 821, as amended, 15 U.S.C. 717, et seq.) All emphasis in this brief is added unless otherwise noted.

G-2019 was consolidated with G-1142, an investigation of all of United's rates pursuant to Section 5(a) of the Act instituted by the Commission, suo motu, in 1948 (R. 740).

On the date of filing G-2019, United was engaged in constructing additional facilities certificated by the Commission at G-1447. Contract with Petitioner (December 1, 1951, R. 706) for gas from G-1447 facilities was temporarily approved by the Commission (R. 822) upon express condition it was subject to ultimate disposition in the 5(a) (G-1142) consideration of all G-1447 and pre-G-1447 rates. Therein, the Examiner said, originated the practice of separate billing between the "old" and "new" contracts (R. 899).

G-2019 did not involve the G-1447 facilities or the 1951 contract for service therefrom.

G-1142, as Section 5(a) provided, involved determination of the "just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force", for (a) the G-1447 additional facilities and the 1951 contract for service therefrom, as well as (b) the G-2019 pre-G-1447 facilities and the 1929 contract as amended for service therefrom, and (c) the Conversion Tariff.

During hearings, the Commission Staff developed a cost of service and rate forms based on its investigation in the 5(a) investigation (G-1142). United and all pipe line customers except Petitioner agreed. The Commission issued Opinion and Order 277 (R. 798) approving the agreement but ordered hearing for Petitioner.

In such hearing, Petitioner sought (1) continuance of the separate rates of the 1929 and 1951 contracts; (2) cost of service and rates for each contract upon allocation of the specific facilities claimed to be used for each; (3) continuance of an option provision in the 1929 contract, as

amended (R. 682) claimed to vest Petitioner with right to require United to increase upon notice, United's percentage of the requirements of Petitioner's pipe line system; (4) rejection of the Staff proposal to include a 72% "take-or-pay-for" minimum provision to eliminate asserted preferential treatment which absence of such clause gave Petitioner against all other customers of the same class subject to a "take-or-pay-for" minimum provision.

Upon exhaustive analysis of the record, the Examiner (R. 807-917), affirmed by the Commission (R. 937), made express findings within the requirements of Section 5(a) (R. 912-16) and held:

(a) That United's properties, subject to Commission jurisdiction, were integrated and interconnected (except for Northwest Mississippi, irrelevant here), with a gas supply which formed a common pool for benefit of all customers, so that in accordance with historic Commission principles and policies of allocation, the over-all allocation of United's cost of service by classes of customers was fair, reasonable, and proper; that the two lines from Sterlington to Perryville, delivery point to Petitioner, were tied into all sources of supply into the Monroe District in addition to the line which ran from Carthage to Sterlington, and was thus commingled before delivery to Petitioner; that it was neither feasible, proper, nor in the public interest to undertake, as Petitioner demanded, an allocation of specific facilities and specific sources of supply claimed to be applicable to Petitioner; that continuance of two rates for two deliveries of the same gas at the same point was against the public interest and would result in unreasonable differences in rates and charges for the same service at the same delivery point in violation of Section 4(b) of the Act;

(b) That continuance of the "option" would be against the public interest, because affording Petitioner a pref-

ertial right which also would constitute discrimination against other customers in the same class; that such "option" was in violation of Section 7(c) of the Act;

(c) That the inclusion of the "take-or-pay-for" minimum clause was just and reasonable.

Despite the Examiner's declaration that "full" hearing for Petitioner was under Sections 4 and 5 of the Act (R. 814), the Commission directed insertion in Finding 2 (R. 913) to add formal reference to Section 5 of the Act (R. 939) as definitive of the decision's scope.

On the foregoing holdings, the facts stated by the Court below (Petition, App. A, 2, 6-13) are accurate and faithful to the record.

## COUNTER-QUESTION PRESENTED

Whether the Federal Power Commission is authorized by its review powers under Sections 4(e) and 5(a) of the Natural Gas Act to direct a natural gas company to make filings to effectuate the "just and reasonable rate, charge, * * * practice, or contract to be thereafter observed and in force" fixed by order as required by Section 5(a), when, in a hearing on the merits of an investigation under Section 5(a), the Commission has found that two contracts with the same purchaser providing for different rates for the same service at the same delivery point were unjust and unreasonable, productive of undue preference to the purchaser and undue discrimination against other customers.

## ARGUMENT

### (a) The Ordered Form of Rolled-in Rates for Sales.

The whole thrust of Petitioner's position was retention of two rates. All else was designed to support that end.

It asserted that performance under the "old" (1929) contract gave it a vested right in the reserves supplying that contract, and in the depreciation in the line or lines permitted by Commission Accounting Rules (R. 773-4). This it claimed showed right to retention of two rates and to an allocation segregating and separating the lines into the Perryville delivery point from the remainder of United's system so that it would be chargeable with a cost of service allocable to each line.

The "old" contract does not support Petitioner's claim to dedicated sources of supply. The original contract specified deliveries from the Monroe and Richland gas fields in Louisiana, but provided United should not be obligated to acquire additional lands, leases or gas to ensure such deliveries (R. 658). Depletion in Monroe and Richland becoming serious, the contract was amended to permit deliveries from Rodessa, Sugar Creek and Cotton Valley fields, though providing that gas from those fields should not become part of the regular supply to be delivered by the contract as amended (R. 669). Finally, without dedication or mention of any source of supply, it was agreed that gas to be delivered would be transported through a pipe line running from the Carthage field in Texas to a point in the Monroe field in Louisiana (R. 675).

The Examiner found this gas was commingled system gas, incapable of identification as to source (R. 891-2; 899-900; Finding 13, R. 914).

In *Board of Public Utility Commissioners* v. *New York Telephone Company* (1926), 271 U.S. 23, this Court declared:

> "Customers pay for service, not for the property used to render it. Their payments are not contributions to depreciation or other operating expenses or to capital of the company. By paying bills for service they

do not acquire any interest, legal or equitable, in the property used for their convenience or in the funds of the company."

In Opinion 277, the Commission joined this Court, stating:

"This Commission has never recognized a proprietary right or preferential advantage to anyone by reason of the terms of a contract or otherwise, where it might be claimed that such individual should be entitled to rates reflecting costs limited to specified facilities without regard for over-all costs reflecting system operations. The Commission has made this abundantly clear in its various decisions relating to rates" (R. 778).

Under similar circumstances, the Commission had prohibited continuance of two rates for the same service to Texas Gas Transmission Corporation (R. 779-80), a customer of the same class as Petitioner. It's delivery point is in the same zone, less than a mile from that to Petitioner (R. 779).

Thus the Examiner and the Commission concluded that continuance of two rates upon the historical contract relationship between Petitioner and United "without regard to rights of other customers in the same class, receiving the same service, in the same rate zone, would amount to unlawful discrimination against such customers", would not be in the public interest, and should not be continued (R. 896). This discloses that Petitioner demands the very things prohibited by Section 4(b).[2] Denial and excision were author-

[2] Section 4(b) of the Act provides

"(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service."

ized, indeed made obligatory, by the power and duty under Sections 4 and 5. Such conclusions are in good company. Judge Cardozo, in *Postal Telegraph-Cable Company* v. *Associated Press*, (1920), 127 N.E. 256, declared:

> "I think the plaintiff cannot justify discrimination among customers by dividing contracts into new and old, and applying a different rate to each. The law says that under like conditions of service, charges shall be equal * * * " (p. 257).

Compare *ICC* v. *United States* (1933) 289 U.S. 385, 389, which expressed similar views, noting *Postal*.

Petitioner's fixation is explainable from the admission that its nomination for delivery under the "new" (1951) contract was of a "lesser volume" (R. 774). Thus by manipulation of larger volumes specified for deliveries under the "old" contract against smaller deliveries under the "new" contract, Petitioner apparently achieved a selective de facto rolled-in rate for the same commingled gas at the same delivery point, lower than the actual rate paid by others of the same class. Disparity between volumes specified for delivery would give Petitioner continuing power to control determination of the amount of such preferential advantage. Such manipulation also would make it possible for Petitioner to escape paying its fair and proper proportion of the cost of service, thus compelling other customers in the same class to assume and bear an undue proportion thereof. *Mobile's* suggestion that contracts might produce "varying terms" (Pet. 10) may not be utilized, as Petitioner seeks, to legitimize such unlawful rate practices.

The Commission order, as 5(a) prescribed, determined the just and reasonable rate and contract thereafter to be

observed; made impossible perpetuation of preference to Petitioner; and destroyed the resulting unlawful discrimination against other customers.

**(b) The Option.**

The "old" contract (second paragraph, Article 6, Supplement 11, R. 682) gave Petitioner an option to increase the percentage of its requirements furnished from United's pipe line system.

Order 144, which promulgated Regulations in Part 154 (18 C.F.R.) required United to convert contract rate schedules to tariff form rate schedules.[3] This conversion tariff, filed at G-2019, omitted the option of Article 6 because such was in conflict with the letter and spirit of the Regulations. Section 154.85 permitted retention only of those parts "not superseded by or in conflict with other applicable provisions of the tariff." Retention would have violated Section 154.63(5),[4] for exercise of the so-called option would require a prohibited amendment of the pre-existing contract, rather than the required execution of a new service agreement.

In addition, exercise of the claimed option would give Petitioner automatic power to change and increase required deliveries, though Section 7(c) of the Act prohibits such increase except upon express authorization from the Commission. Necessarily, as the Examiner held, the agreement was "subject to the paramount provisions of the Act" R. 908).

Qua contract, the option was exhausted by Petitioner's 1949 exercise approved by the Commission (Supplement

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[3] The Court below in *United Gas Pipe Line Company* v. *Federal Power Commission*, 86 App. D.C. 314, 181 F. 2d 796, cert. den. 340 U.S. 827, held Regulations promulgated by Order 144 to be valid exercise of authority by the Commission under Sections 4(c) and 16 of the Act.

[4] "(5) *Changes in executed service agreements.* Agreements intended to effect a change or revision of an executed service agreement shall be in the form of a superseding executed service agreement only. Service agreements shall not contain any supplements." (18 C.F.R. 154.63(5)).

15, R. 687). The option (R. 682) gives the Buyer the right "at any time" (not "at any time *from time to time*") to notify seller "on or before May 1 of *any* year", (not "on or before May 1 of *each* or *every* year"), between 1946 and 1951. The language of the option following is in the singular, i.e., should such "notice" be given, the "quantity" which Buyer shall purchase "commencing on November 1 *of the year*, (not "*those years*") in which such "*notice*" (not "*notices*") is given.

It further provided that if capacity in the line from Carthage to Sterlington was insufficient to carry such increased quantity, then United would build and add such increased capacity upon Petitioner's advance of funds "not exceeding $1,500,000" (R. 683). If the option were a continuing one, United's obligation to increase capacity and Petitioner's to advance up to $1,500,000 would, contrary to the language, be equally applicable every year.

The parties were not strangers to language contemplating a continuing right. In Article VII of the three original contracts constituting the base of the "old" contract, it is recited that Petitioner was contracting with others for specified percentages of its requirements after which it provided:

> "In case any of such vendors shall fail, refuse or be unable *at any time and from time to time* to deliver its or their respective cont act percentage or percentages of said requirements of said pipeline, Buyer shall give written notice * * *" etc. (R. 649).

Deliberately, Article VII contained language of continuing right; as deliberately, Supplement 11 did not.

The option provisions must be interpreted against Petitioner, for the rule is well established that contract

options are strictly interpreted in favor of the party bound (United).[5]

The Examiner concluded that if the option meant what Petitioner claimed it would "afford Mississippi a preferential right which would be discriminatory as respects United's other customers", so that elimination was not in violation of law, but in conformity therewith (R. 909).

### (c) The Inclusion of the "Take-or-Pay-For" Minimum Clause Was Just and Reasonable.

The "old" (1929) contract had no minimum "take-or-pay" clause; the "new" (1951) contract did. The Commission decided in the 5(a) (G-1142) investigation that the two rates and the two contracts for the same service at the same point should be rolled together (see (a), p. 4-8 infra). Discharging the 5(a) mandate to "determine the just and reasonable * * * contract to be thereafter observed and in force, * * *", the Commission ordered inclusion of a 72% take-or-pay-for clause.

It found that all other pipe line customers in the same rate zone had such take-or-pay-for provisions in the applicable tariff (R. 910). Both the Commission and the Examiner ruled that uniformity on the 72% take-or-pay-for clause maintains and insures equality of treatment, guaranteeing no preference or discrimination. Both held that failure to so require would give Petitioner an undue preference constituting undue discrimination against all others in the same class.

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[5] Williston, Rev. Ed. Sec. 620, thus states the rule: "* * * when contracts are optional with respect to one party, they are strictly interpreted in favor of the party bound and against the party that is not bound." Accord: *McArthur v. Rosenbaum Co. of Pittsburgh* (3 Cir., 1949), 176 F. 2d 617, 620; *Phillips Petroleum Co. v. Curtis* (10 Cir., 1950) 182 F. 2d 122, 125; *Jefferson Hotel Co. v. Jefferson Standard Life Insurance Co.* (D.C.E.D. Mo., 1948), 77 F. Supp. 460, 462; *Rutledge & Taylor Co. v. Mermod, Jaccard & King Jewelry Co.* (Mo. Ct. App., 1922), 237 S.W. 849, 850; *Pyrate Corp. v. Sorensen* (9 Cir. 1930), 44 F. 2d 323, 326, cert. den. 299 U.S. 689.

Before the Examiner (R. 909), and in exceptions to the Commission (R. 932), and in Motion for Rehearing (R. 961): Petitioner contended, as here, that the minimum take-or-pay-for clause was being inserted in the 1945 amendment to the "old" contract. But the Examiner rejected this contention, explaining the requirement applied to service thereafter to be rendered pursuant to the rolled together contracts resulting from the 5(a) investigation (R. 909). He declared inclusion of the minimum take-or-pay-for clause was "lawful, just, and reasonable" (R. 910). The Commission twice agreed (R. 937, 978).

## MOBILE NOR SIERRA PACIFIC SUPPORT PETITIONER; INSTEAD THEY DEMONSTRATE CORRECTNESS OF DECISION BELOW.

The findings and holdings of the Commission and the Examiner are within the letter and spirit of Section 5(a) of the Act (see (a), (b), (c), infra). But Petitioner says that the decision of the Court below is wrong because such holdings are not repeatedly *named* 5(a) holdings. This is mere nomenclature. Labelling them 5(a) holdings neither creates nor adds anything to the effectiveness of the decision, or of the Commission's power to so render, or that of the Court below to affirm. Relying upon *United Gas Pipe Line Company* v. *Mobile Gas Service Corp.* (1956) 350 U.S. 332, and *Federal Power Commission* v. *Sierra Pacific Power Company* (1956) 350 U.S. 348, Petitioner says that the decision below contravenes "in principle, at least * * *" (Pet. 8) such decisions.[6]

The petition merely reflects the dissent and embraces the same error upon which the dissent is based. The petition

[6] Petitioner also cites *Tyler Gas Service Company* v. *Federal Power Commission* (D.C. Cir.) No. 13623, decided August 1, 1957, yet unpublished. *Tyler Gas*, however, is completely distinguishable from this cause. Additionally, it turns upon a question of res judicata. See Petition for Certiorari pending this term, No. 520.

(p. 9), as the dissent, repeatedly refers to the proceedings before the Examiner and the Commission as a Section 4(e) "proceeding," or a Section 5(a) "proceeding." Thereby it is asserted *Mobile* and *Sierra Pacific* are contravened.

The answers are several: First, there is a 5(a) "proceeding," Docket G-1142 (p. 2, infra), not present in those cases. Next, Petitioner and the dissent forget that *Mobile* teaches there is no separate proceedings under Sections 4 or 5 (350 U.S. 340-1). Indeed *Mobile* declares that the Commission's power and purpose of review is the same under both 5(a) and 4(e) (350 U.S. 341).

*Sierra Pacific* makes this even clearer. The same Court of Appeals decided *Sierra Pacific* (223 F. 2d 605). Upon subsequent motion of Sierra Pacific, that Court changed the last paragraph of its original opinion (p. 609) which authorized the Commission either to dismiss or hold further proceedings under Section 206(a) [16 U.S.C.A. §824e(a)], to a direction to dismiss without prejudice to "a **new** proceeding under §206(a)" (237 F. 2d 756).

This Court, amplifying the holding above in *Mobile*, said:

> "If the proceedings here satisfied *in substance* the requirements of §206(a) it would seem immaterial that the investigation was begun as one into the reasonableness of the proposed rate rather than the existing contract rate" (350 U.S. 353).

Accordingly this Court, ordering no such dismissal, in the last paragraph remanded to the Commission for further proceedings not inconsistent with the opinion (p. 355). Sierra Pacific then moved to amend and supplement the last sentence of this Court's opinion as done by the court below. It stated that the basis upon which the Court of Appeals ordered the amendment shown in 237 F. 2d 756 was that "all parties" assumed there was a distinction between a "proceeding" under Section 205(e) and 206(a) (see "Motion by Respondent, Sierra Pacific Power Company, To

Amend and Supplement Last Sentence of the Court's Opinion" dated April 13, 1956, p. 3-4). This Court denied the motion (351 U.S. 946.)[7]

It is clear that reliance upon "proceedings" under Sections 4 or 5 is misplaced.

This seems sufficient to dispose of Petitioner's suggestion (Pet. p. 9) that the Commission had a Section 4(b) mind rather than a 5(a) mind at the time of the decision. 4(b) prohibits the making or granting of any undue preference or advantage or the subjection to any undue prejudice or disadvantage and prohibits unreasonable differences in rates, service, etc., as between localities or as between classes of service. Equally Section 5(a) provides that if any rate, or charge, or contract, or service, is unjust, unreasonable, unduly discriminatory or preferential, the just and reasonable rate prospectively to control shall be determined and fixed. Both in quality and scope, the purposes of 4(b) and 5(a) are the same.

The Commission is required to administer the prohibition of Section 4(b) and to remove and correct any unlawfulness found under 5(a). This Court declared the powers of the two sections are the same (350 U.S. 341).

Next, it is said that United's filing pursuant to the Commission order was a "unilateral non concensual change" (Pet. p. 11) contrary to *Mobile* and *Sierra Pacific*. Below this was presented as a violation of the proviso of Section 5(a) declaring the Commission without power to order an increase in rate unless such increase was in accordance with a new schedule filed by the natural-gas company.

The Examiner held the Commission amply empowered, in discharging the 5(a) duty, to order the natural-gas company to do or file whatever was necessary to remove any discrimination, preference, etc., found; and, therefore, directed the filing of a tariff to conform to the rates and

[7] This order noted that the Chief Justice, Mr. Justice Black, and Mr. Justice Douglas would grant the motion.

contract provisions established to be thereafter observed. Two Courts of Appeal agree. *Interstate Power Company* v. *Federal Power Commission* (8 Cir. 1956) 236 F. 2d 372, at 377-8, cert. den. 352 U.S. 967; *Michigan Consolidated Gas Company* v. *Panhandle Eastern Pipeline Company* (6 Cir. 1949) 173 F. 2d 784.

*Mobile* and *Sierra Pacific* were only concerned with the right of a natural-gas company to initiate a change in contract rates *absent consent* of the other contracting party. On the contrary, the Commission order here under review was based upon the merits after a full hearing, of a specific 5(a) investigation, Docket G-1142. This was wanting in *Mobile* and *Sierra Pacific*. The rates and contract provisions were Commission determined rates and contract provisions found as prescribed by Section 5(a), not a filing and initiation by United within the pattern of *Mobile* or *Sierra* Pacific.

Congressional action would have been futile, indeed, if its 5(a) direction that "the Commission **shall** determine the just and reasonable rate, charge, classification, rule, regulation, practice or contract to be thereafter observed and in force, and **shall** fix the same by order" should be nullified by the proviso immediately following "that the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; * * *". It hardly seems open to doubt that the direction to fix the rate or contract "by order" included all power necessary to direct the natural-gas company, within the proviso, to take such action as would conform to the rate and contract fixed by such order. Under Petitioner's theory, the Commission could discover and declare the discriminations and preferences prescribed, but would be helpless to correct. The Act cannot be so emasculated.

## CONCLUSION

The Commission has made findings within the letter and spirit of Section 5(a); it has ordered the natural-gas company to take such action and make such filings as conformed to such findings and orders, which directions it was amply empowered to give by the terms of Section 5(a) of the Act. It seems clear that *Mobile* and *Sierra Pacific* are not truly apropos of this case, but that the Commission order is wholly consistent with the doctrine of these cases, as well as with what Petitioner terms the "principle" of such cases. The decision of the Court below was correct; whereby, the Petition for Certiorari should be in all things denied, and it is respectfully so prayed.

Respectfully submitted

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No.

567

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

No. 567

MISSISSIPPI RIVER FUEL CORPORATION,
*Petitioner,*

v.

FEDERAL POWER COMMISSION,
*Respondent.*

## MOTION OF UNITED GAS PIPE LINE COMPANY TO CORRECT AND AMEND TITLE AND CAPTION.

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In The

# Supreme Court of the United States

October Term, 1957

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No. 567

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Mississippi River Fuel Corporation,

*Petitioner,*

v.

Federal Power Commission,

*Respondent.*

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## MOTION OF UNITED GAS PIPE LINE COMPANY TO CORRECT AND AMEND TITLE AND CAPTION.

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United Gas Pipe Line Company, a corporation (hereinafter called "United") hereby respectfully moves this Honorable Court for a rule or order to correct and amend the title and caption of this proceeding, to show "United Gas Pipe Line Company" as a party respondent, upon the following grounds and for these reasons:

1.

In the United States Court of Appeals for the District of Columbia Circuit, from whose decision this appeal is taken, the parties were aligned with Petitioner herein, as Petitioner there, on one side, and the Federal Power Commission as Respondent, and United Gas Pipe Line Company, as Intervenor on the other side.

As certified to this Court by the Clerk of the Court of Appeals (R. 1101), the full and correct title of this action in the Court below was:

| | |
|---|---|
| MISSISSIPPI RIVER FUEL CORPORATION, *Petitioner*, vs. FEDERAL POWER COMMISSION, *Respondent*. UNITED GAS PIPE LINE COMPANY, *Intervenor*. | No. 13199 |

2.

United is the real party at interest. The order of the Federal Power Commission was entered in a consolidated proceeding of Dockets G-2210 and G-1142. At G-2210, the Commission suspended United's notice of increased rates and ordered a hearing under its review powers of Section 4(e) of the Natural Gas Act. At G-1142, the Commission, on its own motion, initiated an investigation into all of United's rates pursuant to Section 5(a) of the Natural Gas Act. The order determined the just and reasonable rates, charges, classifications, rules, regulations, practices, and contract to be thereafter observed and in force from United to Petitioner. These proceedings are an attempt to review the order so determining such rates, terms and conditions of service. The Court of Appeals, in a split decision, affirmed that order in part (Parts II, III and IV, R. 1050-1057) from which stems this appeal.*

* Petition for Certiorari to Part I of the decision below, R. 1047-50, as corrected and supplemented, R. 1095-97, by a unanimous court, pends in this Court, No. 508, this term, styled United Gas Pipe Line Company, Petitioner, v. Mississippi River Fuel Corporation and Federal Power Commission, Respondents.

3.

Petitioner and United executed a joint designation of record for the use of each on appeal to this Court from different portions of the decision below. The style of the action in such joint designation was precisely that certified to this Court by the Clerk of the Court of Appeals as set out above (R. 1098).

4.

In addition to the foregoing, United respectfully asserts:

(a) United was a full party, and a real party in interest, in the case below (See United's Motion to Intervene, R. 1032-43a; Order permitting intervention, R. 1044), and is such in the proceedings here; that its status and rights as a party in these proceedings are determined by and are a matter of law, and are not determined, nor can they be determined, by Petitioner, by the form and style of the title or caption of its Petition for Certiorari, or by Petitioner's failure to serve such Petition upon United (Rules 21(2), 33); that the determination of who is or is not a party in a proceeding in this Honorable Court should not and does not depend upon the discretion, election or tactical considerations of the filing party seeking review. See *National Helium Canyon Association, Inc.* v. *Federal Power Commission*, No. 773, October Term, 1956, Order of March 4, 1957.

(b) United is a necessary and indispensable party to this proceeding. The issues sought to be raised in this Court affect the relationship of United and Petitioner, as well as United's relationship, power and duty to the Federal Power Commission. They involve the rates, terms, conditions, and provisions of service and sale of natural gas by United to Petitioner subject to regulation by the Federal Power Commission pursuant to the Natural Gas Act. Thus,

these proceedings will directly affect United, whose presence is necessary to consideration and disposition of the issues posed by Petitioner. See, *Seas Shipping Company, Inc.* v. *Sieracki* (1946) 328 U.S. 85, 89.

(c) The denial of full party status to United in these proceedings, which determines the terms, conditions, and provisions of its service and sales of natural gas to Petitioner, and its liabilities hereunder referred to, would deny to United its day in this Honorable Court to defend its substantial rights and duties as a natural gas company under the statutory regulatory order of the Federal Power Commission. Any judgment altering or changing the order of the Commission would injuriously affect United's interests, and would be a denial to it of due process of law under the Fifth Amendment to the Constitution of the United States.

WHEREFORE, United respectfully prays that this Court issue its rule or order correcting and amending the title and caption of this proceeding by showing United Gas Pipe Line Company as one of the respondents, or for such other order as this Honorable Court deems meet and right in the premises.

Respectfully submitted,

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October 30, 1957

## CERTIFICATE OF SERVICE

I, Thomas Fletcher, Attorney for United Gas Pipe Line Company, and a member of the Bar of the Supreme Court of the United States, do hereby certify that I have served the foregoing Motion of United Gas Pipe Line Company to Correct and Amend Title and Caption by depositing a true and correct copy thereof in the United States Mail, air-mail postage prepaid, on October 30, 1957, addressed to the following:

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No. 567

# In the Supreme Court of the United States

OCTOBER TERM, 1957

MISSISSIPPI RIVER FUEL CORPORATION, PETITIONER

*v.*

FEDERAL POWER COMMISSION

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

## BRIEF FOR THE FEDERAL POWER COMMISSION IN OPPOSITION

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## CITATIONS


Cases:

*Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U. S. 348 ..... 9, 11, 13, 14, 15

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447198—57——1

# In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 567

MISSISSIPPI RIVER FUEL CORPORATION, PETITIONER

*v.*

FEDERAL POWER COMMISSION

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

## BRIEF FOR THE FEDERAL POWER COMMISSION IN OPPOSITION

### OPINIONS BELOW

The decision of the Presiding Examiner (R. 807–917)[1] and the order of the Federal Power Commission (R. 937–939), modifying that decision and affirming it as modified, are not reported. The opinion of the Court of Appeals (Pet. App. A, pp. 1–17), as amended (Pet. App. B, pp. 3–5), is not yet reported.

### JURISDICTION

The judgment of the Court of Appeals was entered on July 8, 1957 (R. 1062). A petition for re-

[1] "(R. —)" references are to the record filed jointly by petitioner here and by the United Gas Pipe Line Company, petitioning in No. 568 to review other aspects of the judgment of the Court of Appeals.

hearing *en banc,* seasonably filed, was denied on September 19, 1957 (Pet. App. B, p. 1). The petition for a writ of certiorari was filed on October 21, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1) and Section 19 (b) of the Natural Gas Act, 15 U S. C. 717r (b).

**QUESTION PRESENTED**

Under Section 5 (a) of the Natural Gas Act, the Federal Power Commission is authorized to determine a just and reasonable rate or contract to be observed whenever, after an appropriate hearing, it finds that any rate or contract is "unjust, unreasonable, unduly discriminatory, or preferential." In the instant case, the Commission found, after a full hearing, that the existence of two rates paid by the petitioner under separate contracts for respective parts of the same service at a single delivery point was "not in the public interest and should be discontinued," that it constituted "maintenance of an unreasonable difference in rates and charges," and that Section 4 of the Act would be complied with by a filing which would "eliminate unjust, unreasonable and unduly discriminatory rates" and which would apply to petitioner the same rate applicable to other customers.

The question presented is whether these findings adequately meet the statutory standards of Section 5 (a) so that the contract rate was properly set aside and a new rate properly ordered to be put in effect.

## STATUTE INVOLVED

The pertinent provisions of the Natural Gas Act of 1938, 52 Stat. 821, as amended, 15 U. S. C. 717, *et seq.*, are set forth in the Appendix, *infra*, pp. 18–21.

## STATEMENT

### 1. BACKGROUND

Petitioner is a "natural-gas company" within the meaning of the Natural Gas Act (Pet. App. A, p. 2). It sells natural gas in interstate commerce for resale by means of a transmission pipeline system extending from Texas and Louisiana to the metropolitan area of St. Louis in Missouri and Illinois. It obtains a substantial portion of its gas supply from the United Gas Pipe Line Company (petitioner in No. 568) under two gas-purchase contracts. The rates and other terms of these contracts were the subject matter of the proceedings before the Federal Power Commission reviewed by the court below.

United, one of the largest pipe-line companies in the world, is also a "natural-gas company" within the meaning of the Act. It serves large markets in the southern portion of the country by means of a transmission system extending from western Texas to Florida and also supplies part of the requirements of transmission lines serving other areas (R. 816–17). It purchases natural gas in more than 200 fields in Texas, Louisiana, and Mississippi from non-affiliated producers and from the Union Producing Company, a corporate affiliate whose stock, along with United's, is wholly owned by a common parent.

The first of the two contracts between petitioner and United involved in this litigation was entered into in 1929 (R. 644-63). Under this agreement, United provided a substantial portion of the gas supply for the operation of petitioner's original Louisiana-St. Louis pipe line (R. 124). The contract was amended from time to time as additional supplies of gas became available to United. Under these supplemental contracts, changes in rates were effected and petitioner acquired rights to deliveries of additional gas (R. 124–29). The Commission found, further, that these amendments were intended by the parties to assure system-wide availability of gas for petitioner rather than to delineate specific sources from which the gas was to be obtained (R. 895).

The second of the two contracts between United and petitioner was entered into in 1951 (R. 706–35). It was premised upon the construction of new pipe-line facilities by United from the Gulf Coast area and obligated petitioner to a specified demand per day. Separate rates, at a higher cost to petitioner, were prescribed under this contract for gas supplied through the new facilities, although deliveries under both contracts were made at a single delivery point in United's Central Rate Zone and gas from United's various sources was commingled prior to delivery so that identification from any specific source could not be made (R. 914–15). This contract did not specify the source fields of the gas to be purchased under it.[2]

[2] Petitioner's statement (Pet. 5) that it seeks to retain in effect a right under the first contract to nominate additional quantities of gas up to May 1, 1961, is based on its assumption,

## 2. PROCEEDINGS BEFORE THE COMMISSION

The order reviewed by the court below was the culmination of several proceedings before the Commission involving jurisdictional sales by United to approximately 200 customers. The order related to the rate applicable to petitioner alone; the rates applicable to United's other customers in the same rate zone had previously been fixed.

The original proceeding was an investigation instituted by the Commission on its own motion on October 12, 1948, pursuant to Section 5 (a) of the Act, for the purpose of determining the reasonableness of all of United's interstate rates and charges (R. 740–42). The investigation was initiated on the basis of data available to the Commission indicating that the existing rates "may be unjust, unreasonable, unduly discriminatory or preferential" (R. 741). This proceeding would result in the fixing of just and reasonable rates and charges if, after hearing, the existing rates were found to be unlawful (R. 741–42). The second proceeding arose on an order of the Commission issued October 16, 1950, requiring United to show cause why it should not file a restatement of its existing rates and charges in tariff, rather than contract, form, in accordance with an amendment to Part 154

---

contested by the Commission in the court below, that the contract gave it an unlimited opportunity to increase its take. In the Commission's view, the contract gave petitioner the right to make one nomination only, which right had been exercised in November, 1948. The Commission's interpretation finds support in the conduct of the parties; for if petitioner's view were correct, the 1951 contract would have been entirely unnecessary. See Pet. App. A, pp. 10–11.

of the Commission's General Rules and Regulations (R. 751–52). This proceeding was rendered moot when, on July 3, 1952, United filed a conversion tariff in compliance with the show-cause order (R. 983–90). As permitted by the Commission's rules, United included in this filing a request for an increase in rates with respect to the first of petitioner's two gas-supply contracts. This request resulted in initiation of the third proceeding, this one to determine the lawfulness of the proposed new rates in accordance with Section 4 (e) of the Act (R. 991–97). Finally, four additional rate-increase proceedings were instituted under Section 4 (e) involving rates to particular town-border customers (R. 753–56). On November 26, 1952, the Commission ordered a consolidation of proceedings, including the investigation under Section 5 (a) and the rate-increase proceeding under Section 4 (e) initiated by United's request for an increase in its conversion tariff (R. 745–49). Shortly thereafter, subsequent to the expiration of the five-month suspension period of Section 4 (e), the increased rates became effective upon United's motion, subject to refund of any amounts found not to be justified (R. 1006–13). On February 9, 1953, petitioner was permitted to intervene in the proceedings (R. 749–50).

Hearings in these consolidated proceedings were held from time to time between March, 1953, and August, 1954 (R. 757–58). On August 17, 1954, all parties, with the exception of petitioner, agreed to a settlement of the matters at issue without the necessity for further hearings (R. 758).[2] By Opinion No.

[2] Three of the parties accepted the settlement subject to the outcome of other pending litigation.

277 and accompanying order issued November 2, 1954, the Commission approved the settlement, finding it fair and reasonable (R. 751–86). As implemented by an appropriate filing applicable to all customers except petitioner, the rates upon which the settlement was based were permitted to become effective. The settlement provided for a single uniform rate to all pipe-line customers in United's Central Rate Zone, instead of maintaining one level of rates for services covered by contracts executed prior to 1951 and another for contracts subsequently entered into.

The proceedings were then ordered terminated except insofar as they related to rates and charges applicable to petitioner (R. 784–85). As to these rates, further hearings were ordered to permit petitioner to be heard fully on its claim to the maintenance of separate rates under two separate contracts (R. 798–99). Petitioner had excepted to Opinion No. 277 in several respects (R. 787–97). Its principal objections (Pet. 7–8) were that the Commission had failed to fix separate rates based on separate cost allocations for gas delivered to petitioner from United's various sources of supply, that certain terms of its initial contract with United should not have been abrogated, and that the Commission erred by including in United's cost of service the cost of gas purchased by United from Union, its corporate affiliate, at the prices fixed in contracts between them. In regard to the latter objection, petitioner contended that United was limited to the rates set forth in original

contracts with Union and could not use the prices in supplementary and amendatory contracts entered into between 1947 and 1954 (R. 849). At these additional hearings, evidence was introduced by petitioner, and by the staff of the Commission resulting from its Section 5 (a) investigation. United adopted the evidence presented by the Commission staff (R. 59–60). On July 21, 1955, the Presiding Examiner issued his decision (R. 807–917) which, modified by citing Section 5 of the Act, was affirmed by the Commission and adopted as its own decision (R. 937–39). Petitioner's application for rehearing was denied on January 6, 1956 (R. 978–79).

In pertinent part, the Commission's order found and determined that:

(a) two different rates and charges under separate contracts for the respective part of a single delivery of natural gas sold by United to petitioner were "not in the public interest and should be discontinued" and that such rates and charges were "excessive, unjust, unreasonable, unduly discriminatory, and preferential" (R. 914);

(b) the single rate charged United's other pipe-line customers in the Central Rate Zone, if applied to all of United's sales to petitioner, would be just and reasonable (R. 915);

(c) the continued existence of two rate schedules for United's sales to petitioner would constitute an unreasonable difference in rates and charges for the same service at the same delivery point (*ibid.*);

(d) compliance with Section 4 of the Act would be effected by requiring United to file a new rate

schedule which would "eliminate unjust, unreasonable and unduly discriminatory rates" to petitioner (*ibid.*); and

(c) it was proper to include in United's allowance for costs the purchases by United from Union, its corporate affiliate, on the basis of the prices contained in the contracts between the two companies, which were the equivalent or less of the prices paid by United to nonaffiliated producers and which petitioner had conceded were fair, just, and reasonable (R. 862, 864, 914).

3. PROCEEDINGS IN THE COURT OF APPEALS

Petitioner applied to the United States Court of Appeals for the District of Columbia Circuit to review and set aside the Commission's order in accordance with Section 19 (b) of the Act (R. 1102–08). United was permitted to intervene in opposition to the petition for review (R. 1044). With respect to the power of the Commission to set aside the rates and other terms of petitioner's existing contracts with United, the court held (Judge Bazelon dissenting) that the Commission had made adequate findings of unreasonableness as required by Section 5 (a) of the Act and that, therefore, the Commission's action was not at variance with the decisions of this Court in *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U. S. 348, and *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U. S. 332. (Pet. App. A, pp. 6–10.) Specifically, the court found that "the record amply supports the Commission's conclusion that the two separate rates under the 'old' and 'new'

contracts between United and [petitioner] should give way to the single rate applicable to all customers." (Pet. App. A, p. 10.) The court affirmed the Commission's order in this regard.

With respect to the Commission's decision to allow as a cost of United's services the full contract prices paid for gas by United to Union, its affiliate, the court held that the case should be remanded to the Commission for further findings in regard to the factual justification for rate increases made pursuant to those contracts which were ultimately passed on to United's customers (Pet. App. A, pp. 3–6; Pet. App. B, pp. 2–5). The court ruled that the Commission could not, as a reasonable exercise of administrative discretion, limit itself to a comparison of the prices paid by United to Union with the prices it paid for the same services to non-affiliated producers.[1]

## ARGUMENT

The thrust of petitioner's contention is that the Commission's order, setting aside petitioner's gas-supply contracts with United, has the effect of abrogating its contract rights and imposing upon it new rates and charges, to which it has not consented, without the appropriate findings under Section 5 (a) of the Natural Gas Act which would empower the Commission to alter the rates prescribed by these contracts. But the fact is that proper findings were made, and that no general issue of importance is presented for the Court's consideration.

[1] From this portion of the decision, United seeks review in this Court by the petition in No. 568.

1. Petitioner relies on the decisions of this Court in *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U. S. 348, and *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U. S. 332, as prohibiting the action taken by the Commission which was affirmed below. However, there is no real issue with respect to the principles laid down in those two rulings. The Court of Appeals correctly gave expression to the doctrine of those cases, and the Commission has not taken any contrary position in this case.

In *Sierra Pacific* and *Mobile Gas*, the Court held that a unilateral filing of new rates under Section 4 (d) of the Natural Gas Act, coupled with subsequent approval by the Commission of the proposed rates as being just and reasonable, is not an effective procedure to supersede rates established under existing contracts which have not themselves been found to be unlawful.[1] The Court ruled that the filing and notice requirements of Section 4 merely prescribe a method by which new contract rates can be established by the parties under Commission supervision and do not change the usual rights of the parties to an alteration of contract terms only by mutual consent.

However, as noted by the Court, existing rates and other contract terms can be set aside by the Commission, and new rates and terms substituted, if the existing rates are found to be "unjust, unreasonable, unduly discriminatory, or preferential" after a "hearing and order" proceeding under Section 5 (a).

[1] The *Sierra Pacific* case actually dealt with Sections 205 and 206 of the Federal Power Act, which are equivalent to Sections 4 and 5 of the Natural Gas Act in all material respects.

Sections 4 and 5 complement each other in this respect: Section 5 gives the Commission the basic power to set aside both established and newly-changed rates which are found to be unlawful, while Section 4 implements this power by authorizing the Commission to suspend and render ineffective changes which are proposed by the companies. 350 U. S. 340–41.

In the *Mobile Gas* case, the Commission had made no findings with respect to the existing contract rates which one of the parties had attempted to change by a unilateral filing under Section 4. In *Sierra Pacific*, an added fact existed which was not present in *Mobile*, for, although the proceeding was on a new rate under Section 205, the Commission made what was treated as a finding that the *existing* rate was "unreasonable." The Court noted that, under Section 5 (a), the Commission has undoubted power "to prescribe a change in contract rates whenever it determines such rates to be unlawful. * * * If the proceeding here satisfied in substance the requirements of [Section 5 (a)], it would seem immaterial that the investigation was begun as one into the reasonableness of the proposed rate rather than the existing contract rate." 350 U. S. at 353.[6]

In the light of this holding, it is apparent that there is no basis for petitioner's contention that adequate statutory findings were not made by the Commission in the case at bar. Not only did the Commission find that the existing rates being charged petitioner by

[6] The case was remanded to the Commission on the ground, not material here, that an erroneous standard of reasonableness had been employed.

United were unlawful, but this proceeding, unlike the one in *Sierra Pacific*, began as a Section 5 (a) investigation of the lawfulness of all of United's interstate rates and charges (*supra*, pp. 5–9). The investigation was initiated by the Commission on its own motion. It was never terminated with respect to petitioner, but was consolidated with the subsequent "filing and notice" proceeding instituted by United under Section 4, and finally resulted in the order now under review. Petitioner's statement (Pet. 9) that "the Commission's Examiner decided the instant case strictly on the basis of a proceeding under § 4 of the Natural Gas Act," is thus factually incorrect.[7] And while the Examiner cited only Section 4, the Commission was careful to cite Section 5, as well, to make clear what type of action was being taken. Clearly, this was not, as petitioner contends, an inconsequential recital, for the whole thrust of the Presiding Examiner's decision was directed to the Section 5 (a) proceeding.[8]

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[7] The inaccuracy of petitioner's statement is made manifest by the fact that only the rate in the 1929 contract was increased and, therefore, subject to inquiry under the Section 4 (e) proceeding. On the other hand, the Commission could inquire into the rate in the 1951 contract only through the rate-investigation proceeding under Section 5 (a).

[8] The Presiding Examiner carefully noted that the burden of the Commission staff in connection with the Section 5 (a) proceeding included "the removal of any forms or combinations of forms of rates which were unjust, unreasonable or unduly discriminatory." (R. 814.) He stressed that this case, unlike *Mobile* and *Sierra*, was concerned with the determination of just and reasonable rates after a full and complete hearing (R. 851). Further, he noted that petitioner had conceded in its brief that "if after a proper proceeding the Commission found the contract rate to be against the public interest it could modify it or set

At any rate, under the *Sierra Pacific* case, it would make no difference if this were solely a Section 4 proceeding, for the Commission's findings (R. 914–15) "here satisfied in substance the requirements of [Section 5 (a)]." These findings could hardly be more carefully drawn or phrased in language closer to the statutory standards of that section. The existing rates applicable to petitioner were found to be "excessive, unjust, unreasonable, unduly discriminatory, and preferential." The continued existence of the dual rate structure was "not in the public interest" and would constitute "the maintenance of an unreasonable difference in rates and charges for the same service at the same delivery point." Compliance with Section 4 would be effected by a filing which would "eliminate unjust, unreasonable and unduly discriminatory rates * * *." If these findings are supported by evidence in the record, the Commission's action in setting aside the existing rates and prescribing a new rate, found to be just and reasonable, was clearly within its authority under the *Sierra Pacific* case.[9]

---

it aside entirely." (R. 896.) The examiner found that "[t]o permit Mississippi to have two rates based allegedly on historical contract relationships between United and Mississippi without regard to the rights of other customers in the same class, receiving the same service, in the same rate zone would amount to unlawful discrimination against such customers." (*Ibid.*)

[9] It is significant that petitioner does not take the position that under the *Mobile* and *Sierra* decisions it is entitled to the lower 45¢ and 5¢ rate of the 1929 contract or is bound to pay

2. As noted by the court below (Pet. App. A, pp. 8–9), petitioner's real complaint seems to be with respect to the standard of reasonableness employed by the Commission, *i. e.*, whether it properly found that, in the circumstances of this case, the existence of a dual rate structure for the same service at the same delivery point was itself unreasonable without regard to the reasonableness of the particular rates prescribed under the separate contracts.[10] Petitioner does not phrase the issue in these terms, evidently recognizing that this system of dual rates is very unique, so that the question of the Commission's power to combine the two contracts and prescribe a single rate for all portions of the same service does not present a question of general importance.

The existence of two separate rates for the same service was an historical accident caused by United's expansion of pipe-line facilities in 1951. Petitioner was the sole pipe-line customer of United in the Central Rate Zone operating under such dual rates. In any event, the court below concluded, after an analysis of the record, that the Commission's findings

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the higher $1.30 and 12½¢ rate of the 1951 contract. Rather, its position is that the old rate should have been raised in part and the new rate reduced in part to produce the same or substantially the same revenues which will be produced by the Commission-approved new single rate. Unlike *Mobile* or *Sierra*, therefore, petitioner does not contend that it is entitled to return to existing contract rates.

[10] This also seems to be the basis of Judge Bazelon's dissent (Pet. App. A, pp. 13–17).

were amply supported by the evidence (Pet. App. A, p. 10). The court stated (Pet. App. A, p. 7):

> Evidence was presented to show, and the Commission found, that United's properties are integrated and interconnected and that the two lines from Sterlington to Perryville, the sole delivery point to Mississippi, were tied into all sources of supply running into the Monroe District. The Commission found that allocation to separate lines and sources of supply solely for Mississippi was not feasible, that the gas was commingled before delivery to Mississippi, and that continuance of two rates for the same service at the same point was not in the public interest and would result in unreasonable differences.

There is no reason for this Court to review the record for itself. Congress has committed to the Commission the power to determine, by an application of informed judgment to existing facts, the existence of the preferences and discriminations sought to be prevented by the Natural Gas Act. Here, after a series of complete hearings extending over a span of several years at which petitioner was given full opportunity to present its claims, the Commission found that prohibited discrimination and preferences existed. This conclusion was subjected to judicial scrutiny by the court below and found to be supported by the record. There is no necessity for an additional review.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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NOVEMBER 1957.

## APPENDIX

The Natural Gas Act of 1938, 52 Stat. 821, as amended, 15 U. S. C. 717, *et seq.*, provides, in pertinent part, as follows:

> SEC. 4. (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.
>
> (b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.
>
> (c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this Act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate

to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for

the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate amounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified.

* * *

SEC. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by

order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

* * * * *

SEC. 19. (b) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. * * *

No.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

No. 568

UNITED GAS PIPE LINE COMPANY,
*Petitioner,*

*vs.*

MISSISSIPPI RIVER FUEL CORPORATION and FEDERAL POWER COMMISSION,
*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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United States Code, Title 28 § 1254(1) . . . . . 2

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

No. .....

UNITED GAS PIPE LINE COMPANY,
*Petitioner,*

*vs.*

MISSISSIPPI RIVER FUEL CORPORATION and FEDERAL POWER COMMISSION,
*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered on July 8, 1957 (App. 13a) and judgment upon its petition for rehearing entered September 19, 1957 (App. 18a) reversing the order of respondent Federal Power Commission[1] entered in Dockets G-1142 and G-2019 against Mississippi (R. 937, App. 55a) in so far as said order approved prices paid by United for gas purchased from its affiliate Union Producing Company and directing further hearings accordingly.

## OPINIONS BELOW

The Commission issued an order (R. 937, App. 55a) modifying and, as modified, affirming the initial decision by the Presiding Examiner issued July 21 1955 (R. 807, App. 27a). The majority concurring and dissenting opinions in the Court of Appeals (not yet reported) styled *Mississippi River Fuel Corp.* v. *Federal Power Commission* are contained in the Appendix hereto (App. 1a, 13a, 18a).

## JURISDICTION

The judgment of the Court of Appeals was entered July 8 1957 (App. 13a). All parties having filed petitions for rehearing, the judgment below was amended September 19 1957 as to the Part I of the opinion with which petitioner is here concerned. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1), and Natural Gas Act §19(b).

## QUESTIONS PRESENTED

1. In establishing the price properly allowable as an expense for cost of natural gas purchased by a natural gas company from a producer-affiliate, does the Natural Gas Act require departure from this Court's rule that the price be no higher than that determined by arm's-length transactions in a regulated business?

2. Does the Natural Gas Act give to purchasers or their customers any interest, legal or equitable, in the property or facilities of a natural gas company used to render service to such purchasers?

3. Does a court reviewing an order of the Federal Power Commission under § 19(b) of the Natural Gas Act have authority to reverse the Commission's order upon a

ground not reserved in the motion for rehearing of the party appealing?

## STATUTE INVOLVED

The pertinent provisions of the Natural Gas Act (Act of June 21 1938, c. 556, 52 Stat. 821, as amended, 15 U. S. C. § 717 et seq.) are set forth in the Appendix filed herewith (pp. 22a to 26a).

## STATEMENT

### (a) *The proceedings before the Federal Power Commission.*

All of the stock of United (which is a natural gas company) and of Union Producing Company (*not* a natural gas company) is owned by United Gas Corporation (App. 3a, 28a).

On October 13 1948, the Commission *sua motu* instituted Docket G-1142, an investigation pursuant to Section 5(a) of the Act of all rates of United (R. 740-2). Mississippi was permitted to intervene (R. 749). On July 3 1952 (R. 901) United, pursuant to Regulations promulgated by Order 144, filed its Conversion Tariff, and as permitted by § 154.84 of such Regulations, included notice of increased rates to pipelines including Mississippi. After suspension, the increased rates became effective subject to refund (R. 1000). On November 26 1952, Docket G-1142 the Section 5(a) proceeding, and Docket G-2019 the Section 4(e) cases, were consolidated (R. 745). Other proceedings immaterial here were also consolidated.

After several hearings United and the Commission's staff agreed upon figures from the staff's investigation and conclusions in the Section 5(a) investigation (G-1142)

Mississippi declining to agree, the Commission, after oral argument, by opinion and Order *277* (R. 751-786) approved the settlement. It ordered a hearing on Mississippi's contentions and objections (R. 770-80; Paragraphs (I) p. 784, and (O) p. 785).

Mississippi excepted to Opinion *277*, objecting (R. 792) that prices paid for gas purchased from Union Producing Company (herein called *Union*) should have been determined by the fair field price method of the Commission's *Panhandle* decision (Opinion *269*), (later reversed by *City of Detroit* v. *Federal Power Commission* 1955, D. C. Cir. 230 F. 2d 810, cited by the court below). These objections were denied but a full hearing ordered (R. 798).

On such hearing the staff offered substantial evidence to support its proposed cost of service resulting from the Section 5(a) investigation (Docket G-1142) which United adopted (R. 2-3; 58-60; 165). The Examiner's decision issued July 21 1955 (R. 917), may be summarized as holding, with respect to the cost of gas bought by United from Union, that such prices were substantially less, both in the same districts of purchase and on an over-all basis, than the arm's-length prices United paid non-affiliated producers.

The same evidence showed that the prices paid to Union were *substantially less than those paid by nine natural gas companies, subject to Commission jurisdiction*, to producers for purchases in the same areas and fields in which Union's wells were located.[4] The demonstration made by the under-

[4]Exhibit 161, received at R. 334, is described at R. 329-335, and reflects the weighted average prices paid to producers for gas purchased by nine major pipe line companies. The information comes from Federal Power Commission annual reports including 745.11 Field Purchases, and 745.12 Gasoline Plant Outlet purchases on equivalent volume basis, which the witness testified gave in effect the field prices (R. 330). Annual reports are based upon jurisdictional operations, and contain the particular type of information the Com-

lying figures was of the most cogent character. It fell into three parts.

It showed *first* that for the years 1948-53 the price paid by United to Union was *less than* that paid by United to non-affiliated companies by 0.17 cents per mcf in 1948; by 0.75 cents in 1949; by 1.10 cents in 1950; by 1.0[illegible] cents in 1951; by 1.29 cents in 1952; and by 1.64 cents in 1953. It showed *second* that the prices paid by United to Union in the period were substantially below the average of prices per mcf paid by nine natural gas companies (including Mississippi River Fuel Corporation)[8], viz. by 1.35 cents per mcf in 1948, 1.49 cents in 1949, 1.52 cents in 1950, 1.37 cents in 1951, 1.05 cents in 1952 and 2.56 cents in 1953. Individual comparison shows greater differences. The evidence referred to shows *third* an even more revealing difference between the prices paid by United to Union and the higher prices paid by Mississippi to third party producers, in the period commencing 1950 when Mississippi began to purchase; viz. 5.82 cents per mcf less in 1950, 5.96 cents less in 1951, 4.90 cents less in 1952 and 5.20 cents less in 1953.

Such were the figures before the Commission concerning the prices paid to Union by United. They showed conclusively that no advantage was being taken of affiliation to the prejudice of consumers. The Commission took into consideration also the testimony of a United employee who had the duty to negotiate gas purchase contracts, and whom Mississippi called as a witness (R. 1061). His testimony showed in detail the policy of United to initiate contracts

[8] The nine natural gas companies, other than Mississippi River Fuel Corporation, are Arkansas Louisiana Gas Company, Southern Natural Gas Company, Tennessee Gas Transmission Company, Texas Eastern Transmission Corporation, Texas Gas Transmission Corporation, Transcontinental Gas Pipe Line Company, Texas Illinois Natural Gas Company, and Trunkline Gas Company. These nine companies are not affiliates of or in any way connected with United. The record below not only fails to mention these nine companies but [illegible]

or amendments thereof with non-affiliated producers and then to extend the benefit of the terms and prices to all other non-affiliated producers in the same field and to the affiliate Union Producing Company (R. 324-6). This policy has allowed United constantly to renew the vast majority of its contracts, and has been lauded by the Commission (R. 823-4).[*]

The Examiner noted Mississippi's concession that prices paid by United to non-affiliated producers were fair, just and reasonable (R. 862), and found that the method of valuing gas adopted in the Commission's Opinion 269 (*Panhandle*), as urged by Mississippi, would not serve to reduce the cost of gas purchased or reduce the rates to Mississippi (R. 864). He accordingly approved the cost of gas at the figure testified to by staff witnesses, which included the prices allowed for the gas purchased from Union Producing Company (R. 864).

The Commission, with modifications immaterial here, affirmed the Examiner's decision (R. 937). Mississippi's petition for rehearing still limited its claim expressly to alleged failure of proof to meet the Commission's *Panhandle* opinion (R. 955).

**(b) *The judgment of the Court of Appeals.***

Mississippi filed a petition for review pursuant to Section 19(b) of the Act to set aside the Commission's order. The Commission appeared in defense of its order.

The Court of Appeals reversed the Commission's order approving the amounts paid by United to Union and directed inquiry into the increases over original prices paid by

[*]The Commission noted the estimate of recoverable reserves had risen from 2.3 trillion cu. ft. in 1930 to over 20 trillion cu. ft. as of July 1 1950 (R. 824). The decision at Docket G-8230, In the Matter of United Gas Pipe Line Company, recites the reserve figure increased from 20 trillion cubic feet as of July 1 1950, to over 24½ trillion cubic feet of gas at January 1 1955.

United to Union. On other issues, immaterial here, the majority affirmed the Commission, Judge Bazelon dissenting (App. 13a).

On the critical point, the court reasoned that if the initial contracts between Union and its producers some of which were wholly owned affiliates, were fair and reasonable, the advantage of their relatively low prices would "belong" in part to Union's customers, and thus to the customers of its affiliate United, and could not be shunted by a mere intra-corporate entry into accounts available to stockholders only, so that a comparison of such prices with prevailing prices would not "sufficiently justify the transactions" (App. 5a). It stated it did not require a "full blown inquiry" into Union's rates, though subsequent developments might or might not indicate such a necessity (App. 6a).

In this July 8 opinion the court predicated its conclusion upon the erroneous statement that Union had given price increases to "wholly-owned and partly-owned affiliate producers" which increases were reflected in United-Union prices (App. 6a). The court erroneously indicated that Union purchased from third parties and that Union was engaged in transmission. United's petition for rehearing developed the error of this factual basis and showed that the decision of July 8 was predicated on a non-existent situation. It showed that Union was engaged only in the business of drilling for and producing oil, gas and other minerals; that it purchases no gas from outsiders and has no producers, affiliated or non-affiliated, from which any of the gas sold to United was acquired; and that the suggested complexities of "mere bookkeeping" or "intra-corporate system adjustments" simply did not exist.

Mississippi and the Commission also petitioned for rehearing, the petition of the Commission (R. 1076) being in general similar to that of United.

By supplemental opinion dated September 19 1957 the court sought to correct the errors of fact above mentioned but retained the conclusions based thereon. It directed the Commission to inquire into the factual justification for the price increases upon the same course of reasoning followed in *City of Detroit*, 230 F. 2d 810, cert. den. 352 U. S. 829, further directing that the Commission must determine that the increases were justified "by reason of Union's costs or by reason of some other stated end of the Natural Gas Act"; the Commission must ascertain that they were not mere bookkeeping or intra-corporate-system adjustments". Again the court said that it did not hold that a "full blown" inquiry into Union's rates was necessary.

## REASONS FOR GRANTING THE WRIT

This is the first case in which this Court has been called upon to consider whether the Natural Gas Act provides a rule for admeasurement of prices paid an affiliate for gas purchased different from the general rule governing payments to affiliates heretofore established by this Court's decisions in similar circumstances. The decision below squarely presents broad and highly important questions of governance of administrative discretion of the Commission, with substitution of judicial dictate, contrary to the decisions of this Court. Petitioner accordingly submits that the Court of Appeals has decided important questions of Federal law which have not been, but should be, settled by this Court, and has decided them in a way which will have such extreme effects on the administration of a vital federal statute as to call for review by this Court.

The Act vested the Commission, as statutory agent of Congress, with broad discretion of expert judgment, carrying presumption of validity. This Court has been careful to preserve the Congressional purpose by repeated declarations that the *result reached, not the method employed,*

controls, even though the method employed should contain intrinsities. The court below did not heed these guides to determine whether the total effect was unjust and unreasonable. It reversed solely because it disagreed with the exercise of discretion by the Commission in the method employed. Petitioner submits that the decision invades a province which this Court's decisions declare is reserved by the Act solely to the Commission. Petitioner submits that these matters all furnish additional appropriate reasons for granting the review requested, and a definitive settlement thereof by this Court.

## POINT I

**THE COURT OF APPEALS HAS DECIDED ERRONEOUSLY AN ISSUE OF GENERAL IMPORTANCE WHICH THIS COURT HAS NOT SETTLED BUT SHOULD DETERMINE IN HOLDING THAT THE NATURAL GAS ACT PROVIDES A SPECIAL RULE FOR ADMEASURING PRICES PAID AN AFFILIATE FOR GAS PURCHASED.**

It is apparent that the court was moved in the original decision to require a further hearing because it considered Union to be at the apex of two legs: one consisting of a corporate chain of wholly-owned producer affiliates which by intra-corporate entries had transferred gas up such corporate chain into Union; the other, acquisitions by Union of gas by a series of purchases from third party producers. Further, that the sale by Union to United was of the gas so acquired from such two sources without any disclosure to or inquiry by the Commission of such assumed underlying transactions, and at prices agreed on between Union and United without regard to such underlying transfers and purchases. The court was thus led to say:

> "We think the Commission must at least inquire into the reality of the price increases paid by Union to *its wholly-owned and partly owned affiliate producers,*

> which increases were in part reflected in the United Union prices. By this we mean that to include the increased prices in the costs of United the Commission must at least determine that the increases had sufficient factual economic justification. It must ascertain that they were not mere bookkeeping or intra-corporate system adjustments. We must remand the case *for that inquiry*." (Emphasis supplied). (App. 60).

Neither the original nor the supplemental opinion declares the result or total effect of the Commission's rate to be unjust and unreasonable. Instead, the court finds fault with the method employed by the Commission, holding that the Commission cannot test the reasonableness of the prices paid an affiliate by comparison with prices being paid by regulated natural gas companies subject to the Commission's jurisdiction and in arm's length transactions. Thereby the court has invaded an area excluded from its consideration, for if the result reached by the Commission be just and reasonable, "judicial inquiry under the Act is at an end."[1]

Here the Commission adopted a method of measurement which upon the evidence adduced it found resulted in a reasonable and appropriate price. Comparison with prices paid by regulated natural gas companies approved by the Commission produces a reasonable price, adequate to protect the interests of both the consumer and the producer. The ultimate decision reached by the Commission, reversed by the Court of Appeals, was nowhere shown to entail any prejudice to the ultimate consumer.

The Act does not provide a formula for the Commission to follow.[2] It confines the discretion to choose a

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[1] *Federal Power Commission v. Hope Natural Gas Company*, (1944) 320 U.S. 591, 602, 603; *Federal Horse Commission v. Natural Gas Pipeline Company* (1942) 315 U.S. 575, 586.

[2] *Colorado Interstate Gas Company v. Federal Power Commission* (1945) 324 U.S. 581, 589.

formula only by the statutory standard of "just and reasonable." Congress vested the Commission with the legislative power to measure rates, circumscribed only by the ambit of statutory purpose. This Court has held that judicial inquiry into a rate order is limited to the question whether the order viewed in its entirety and measured by the end results meets the requirement of the Act. *Federal Power Commission* v. *Hope Natural Gas Company* (1944) 320 US 591; *Colorado Interstate Gas Company* v. *Federal Power Commission* (1945) 324 US 581.

This the court did not test, but disagreed with the method employed by the Commission, even dictating the method it required the Commission to follow.

Section 19(b) of the Act provides that the Commission's findings of fact, if supported by 'substantial' evidence, shall be conclusive. The court nowhere found the evidence of the Commission's staff and United to be less than substantial, it only declared the Commission's method impermissible. Even Mississippi conceded that the prices used as the standard of comparison were not above a level which was fair, just and reasonable for others (R. 862).

This Court has laid down principles to govern payments by a regulated company to an affiliate. See *United Fuel Gas Company* v. *Railway Commission of Kentucky* (1929) 278 US 300; *City of Houston* v. *Southwestern Bell Telephone Company* (1922) 259 US 318; *Dayton Power & Light Company* v. *Public Utilities Commission* (1934) 292 US 290. Mr. Justice Cardozo, in *Dayton*, sums up the rule as follows (p. 308):

> "Even so, the burden of proof was on the buyer of the gas to show that in these transactions with the affiliated seller the price was no higher than would fairly be payable in a regulated business by a buyer unrelated to the seller and dealing at arm's length."

The Ohio statutes involved in *Dayton*, and the Kentucky statutes involved in *United Fuel Gas* provide that rates and

charges of public utilities shall be just and reasonable." The Act prescribes the same regulatory standard. Thus the court below was not justified in refusing to follow the prescription of those cases declared by this Court to meet the same standards contemplated by the Act.

Over and above Mississippi's concession on the point (p. 6 above) the evidence showed without dispute that the prices paid by United to Union were markedly less than the prices paid by other natural gas companies (including Mississippi) for gas purchased in arm's-length transactions from unaffiliated producers, all under the regulatory eye of the Commission (see pp. 4-5 above). Thus the decision below is in square conflict with *Dayton*, *United Fuel Gas*, and *City of Houston*. The Act nowhere prescribes any rule of measurement contrary to that declared in *Dayton*. Nor did the court below point to any provisions requiring application of a rule different from that which this Court has declared appropriate for purchases from an affiliate.

The court below directed the Commission to make a new inquiry under the "same course of reasoning" it followed in *City of Detroit* v. *Federal Power Commission* (1955 D. C. Cir.) 230 F. 2d 810, cert. den. 352 U.S. 829 (App. 19a, 20a). There it had held that the "field price" was not "an adequate basis for bringing the resulting rates within the 'just and reasonable' standards of the Act" (p. 818). Describing the "field price" method, it said the Commission ". . . *computed* a 'field price' for the gas obtained from those sources, based upon the 'weighted average arm's length prices' established by *federally uncoordinated* bargaining for similar gas in the fields. It then multiplied the volume of Panhandle's production by that 'field price' and included the result in Panhandle's operating expenses as an amount to be recovered through

[8] Section 614-12, Page's Annotated Ohio General Code, 1926; Section 2061e-5, Carroll's Kentucky Statutes, 6th Edition, 1922.

the rates. At the same time the Commission excluded from the rate base the cost of the properties which produced this gas and excluded from recoverable operating expenses the cost of producing." (p. 813; emphasis supplied)

But the court cannot by the fiat of an order force this case into so unsuitable a mould as that of the *Detroit* case.

(a) Here the Commission used *actual* prices paid by United to Union, not a theoretical price *computed*, as in that case.

(b) Here the prices used as the test of reasonableness were federally regulated as well as the products of arm's-length bargaining—a far cry from the "federally unregulated bargaining" of *Detroit*.

(c) Here, the data used came from records and reports of the Commission gathered from its statutory experience, whereas such was not the case in *Detroit*. The Commission thus had the discipline and tutoring of its own experience gained from filings pursuant to its own regulations.

(d) Here, the Examiner and the Commission declared the "field price" method which *Detroit* condemned, was not employed in this proceeding (R. 863), and the undisputed record confirms.

(e) Here, Mississippi repeatedly conceded that the prices used as the objective standard by the Commission were at a level which was just and reasonable (R. 848, 862).

(f) Lastly, Mississippi did not contend to the Examiner or the Commission "that the 'rate base' approach to Union's production should be applied here" (R. 863). On the contrary it insisted, without variation, that valuation of Union's gas as a commodity was the sole permissible method to test the amount allowable to United for its purchase. In the court below, for the first time it changed to the "rate base" and "cost" approach.

In short, the court has ordered the Commission to pursue a course contrary to the admonition of this Court in *Federal Communications Commission* v. *RCA Communications, Inc.* (1953) 346 US 86, 90:

> "To restrict the Commission's actions to cases in which tangible evidence appropriate for judicial determination is available would disregard a major reason for the creation of administrative agencies, better equipped as they are for weighing intangibles 'by specializing, by insight gained through experience, and by more flexible procedure'. *Far East Conference* v. *U. S.*, 342 US 570, 575."

The court's order invades the Commission's unrestricted discretion to avail of the "insight" gained through the accumulated experience of regulation under the Act and from the flexibility of investigation which the guarantee of that discretion insured. The Court of Appeals has sought to require "tangible evidence" which it considers "appropriate" for its judicial consideration. It is submitted this is an interference with administrative procedure of so substantial a nature as to stultify the powers of the Commission and cripple its ability to regulate.

The court below noted the stress by the Commission upon the inadvisability of a full-blown inquiry into Union's rates in this proceeding and seems to agree, being at pains both in the original and in the supplemental opinion to declare that it does not hold "that a full-blown inquiry into the rates of Union is necessary" (App. 6a, 21a). Yet the court's direction that the Commission must proceed to determine costs nullifies the administrative process. If indeed a "full-blown inquiry into the rates of Union" is not necessitated by the holding below, then it will be a question constantly vexed in the Commission and in subsequent appeal *how much less* than a full-blown inquiry

will satisfy the new rule now laid down. This question of measure and degree is susceptible of indefinite controversy. No doubt the possibility will be fully exploited by intervenors. The administrative problems presented will be multiplied by the length of time consumed, since the Presiding Examiner's opinion of 1955 already reflects extensive controversy as to the selection of the calendar year 1952 as the test period (R. 820-46). Undoubtedly the remission of the record to the Commission under the new rule will give fertile opportunity for renewal and intensification of this controversy about the test period. Even under the original conditions the Presiding Examiner was led to observe in his summary (R. 846):

> "It is fair to observe that it would not be possible for the Commission to function unless it afforded its Staff time to analyze the data filed by a company in connection with an increased rate filing or to analyze the books and records of the company in an investigation. The hearings themselves are exceedingly broad in scope, usually involve highly complex problems, and require a great deal of time for preparation as well as for actual hearing. It has been contended that delay is, in general, far more costly to applicants than it is to the customer companies, particularly in times like the present." [Cf., Dougherty, Comments on the Regulatory Lag, 50 P. U. Fort. 631 (1952).] The contention to the contrary made here is not supported."

If cost determinations in like proceedings must be made, then there would never be any end to this and like proceedings, and the Commission would be entirely deprived of any flexibility of approach.

## POINT II

**IN CONFERRING UPON CUSTOMERS OF A NATURAL GAS COMPANY A PROPRIETARY INTEREST IN ITS PROPERTIES AND FACILITIES THE COURT BELOW HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A MANNER CONFLICTING WITH APPLICABLE DECISIONS OF THIS COURT.**

In the original opinion, the lower court said: "If the initial contracts between Union and its producers (some of which were wholly-owned affiliates) were fair and reasonable the *advantage* thus created by their relatively low prices would *belong* in part at least to the customers of Union and thus to the customers of its affiliate United; . . ." (App. 5a; emphasis supplied).

In the supplemental opinion the quoted language was changed to read: "If the initial contracts between Union and United were fair and reasonable, the advantage thus created by their relatively low prices would *belong* in part at least to the customers of United; . . ." (App. 19a; emphasis supplied).

In this holding the court below is squarely in conflict with the pronouncement of this Court in *Board of Public Utilities Commissioners* v. *New York Telephone Company* (1926) 271 US 23, 32, that:

> "Customers pay for service, not for the property used to render it. Their payments are not contributions to depreciation or other operating expenses or to capital of the company. By paying bills for services they do not acquire any interest, legal or equitable, in the property used for their convenience or in the funds of the Company."

Neither Mississippi nor its customers can acquire a proprietary right to a low rate.

Indeed, the quoted holding is in conflict with the holding in Part II of the original opinion in which the court affirmed the action of the Commission in rolling together the so-called "old" or "cheap" contract of 1929, and the so-called "new" or "high" contract of 1951. On that point the Commission in Opinion 277 noted that Mississippi asserted a right to two different contracts and rates because entitled to retain the benefit of a low rate of the "old" contract for the age of such contract, further claiming that performance gave Mississippi *"a proprietary right"* in the reserves thereunder and in the depreciation reserves accumulated over the years (R. 773-775). Rejecting this, the Commission declared that it had never recognized a "proprietary right or preferential advantage to anyone by reason of the terms of a contract or otherwise, where it might be claimed that such individual should be entitled to rates reflecting costs limited to specified facilities without regard for over-all costs reflecting system operations" (R. 778).

Having affirmed the Commission on that score, the court below nevertheless now conflictingly requires the Commission, contrary to its uniform policy, to accord to Mississippi and its customers the proprietary right of advantage said to arise from the "initial low rates."

## POINT III

### IN DEPARTING FROM THE STANDARD OF REVIEW ENJOINED BY § 19(b) OF THE NATURAL GAS ACT THE COURT BELOW HAS RENDERED A DECISION IN CONFLICT WITH DECISIONS OF FOUR OTHER CIRCUITS ON THE SAME PRINCIPLE.

As we have above made clear (pp. 4-5), the determination of the Commission and the Hearing Examiner, which the court below reversed, was supported by evidence of undisputed quality and substantial in bulk. There was

indeed no contravening evidence. The court below differed only upon the proposition, advanced by it in somewhat different circumstances in the *City of Detroit* case, that the law requires additional evidence of different nature from that which satisfied the Commission, notwithstanding failure of the court below to question the justness and reasonableness of the result attained.

In reversing, therefore, the court below seems to us with due deference to have departed from the clear statutory standard of §19(b) of the Act that "the finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive". This directive of Congress must apply to the Examiner's findings (8) and (9) as to the "just and reasonable amount for the total cost of service for United's entire system" and as to the "just and reasonable amount for cost of natural gas purchased by United" (R. 913-4).

In so departing from the standards of the Act the court below has created a conflict with the courts of appeals in four other circuits, indicated by their contrary decisions as follows:

*Compania Mexicana de Gas S. A.* v. *Federal Power Commission* 167 F. 2d 804, 806 (CA 5 1948);

*Michigan Consolidated Gas Co.* v. *Federal Power Commission* 203 F. 2d 895, 900 (CA 3 1953);

*Michigan Consolidated Gas Co.* v. *Federal Power Commission* 246 F. 2d 904, 908 (CA 3 1957);

*Cities Service Gas Co.* v. *Federal Power Commission* 155 F. 2d 694, 698, 699 (CA 10 1946), cert. denied 329 US 773;

*Montana-Dakota Utilities Co.* v. *Federal Power Commission* 169 F. 2d 392, 398, 400 (CA 8 1948), cert. denied 335 US 853.

## POINT IV

**IN CREATING THIS INNOVATION IN JUDICIAL REVIEW PREJUDICIAL TO CORRECT ADMINISTRATIVE PROCEDURE FOR THE FUTURE THE COURT BELOW ACTED WITHOUT JURISDICTION BECAUSE OF THE FAILURE OF RESPONDENT MISSISSIPPI TO RAISE THE QUESTION IN THE COMMISSION.**

The rule of law adopted by the court below for its reversal of the Commission was nowhere invoked by Mississippi in the proceedings before the Commission, either originally or by petition for rehearing. As we have pointed out (p. 4 above) Mississippi in the proceedings before the Commission based its attack upon United's costs on the principles laid down by the Commission in Opinion 269 (*Panhandle*). The Presiding Examiner and the Commission addressed themselves to Mississippi's contention in this form, saying in part (R. 864):

> "The method of valuing gas employed in Panhandle if applied here would not serve to reduce cost of gas purchased and thus to reduce rates to Mississippi and consequently its objections on this score as to cost of gas purchased are without merit."

Even after the Examiner's opinion came down Mississippi followed the same line of attack. Its exceptions reasserted, unchanged, its *Panhandle* rule contention, saying (R. 922):

> "If a proper record is to be made to support the final rates recommended by the Examiner herein, additional evidence as to the 'fair field', 'market', or 'commodity value' for Union produced gas must be introduced in these proceedings."

Mississippi's petition for rehearing still took the same line (R. 955):

> "The Examiner in his Decision approved by the Commission admits that the *Panhandle* method was not used by United, the Staff, or by the Examiner. The sole test was whether the prices paid by United to Union were above the prices paid by United to non affiliated producers.
>
> "If a proper record is to be made to support the final rates recommended by the Examiner and approved by the Commission herein, additional evidence as to the 'fair field', 'market', or 'commodity value' for Union produced gas must be introduced in these proceedings."

Thus no ground whatever was reserved by Mississippi in its petition for rehearing which would cover the contention reviewed and adopted by the Court of Appeals herein. The Examiner correctly noted that Mississippi at no time contended "that the 'rate base' approach to Union's production should be applied here" (R. 863).

In its brief in the Court of Appeals, for the first time, Mississippi accomplished its about-face and change of theory in view of the lower court's action in the *City of Detroit* case, which was decided three and one-half months after the Examiner's decision and a full month after affirmance by the Commission itself. In a triumph of opportunism it advanced for the first time the "rate base" and "cost" concept in the Court of Appeals.

By virtue of the express provisions of § 19(b) of the Act, therefore, the court below did not have jurisdiction over the question decided by it as to the necessity of the Commission's determining that the prices paid by United to Union were justified by Union's costs of production. *Federal Power Commission* v. *Colorado Interstate Gas Company*, 348 US 492, 498-9 (1955); *Magnolia Petroleum Co.* v. *Federal Power Commission*, 236 F. 2d 785, 789 (CA 5 1956), cert. denied 352 US 968.

When this point was called to the attention of the Court of Appeals, that court inexplicably took the view that the objection had been raised by Mississippi in the Commission. This at any rate is the way we interpret the court's Footnote 1 at App. 2a which reads:

> "'The petitioner's application for rehearing specifically included this point. We do not read Federal Power Comm'n v. Colorado Interstate Gas Co., 348 U. S. 492, 99 L. Ed. 583, 75 S. Ct. 467 (1955), as requiring that the application for rehearing cite every case relied upon before the Court of Appeals."

The "this point" to which the footnote is appended is stated by the court thus (App. 2a):

> "Generally speaking, the features of the order which are attacked by Mississippi are: (1) The Commission allowed as a cost of service the full prices paid for gas by United to an affiliate wholly owned by a common parent; . . .

Now it is impossible to show that the objection ruled upon and accepted by the Court of Appeals was raised in the Commission or on petition for rehearing therein. Mississippi's specifications of error in the petition for rehearing contained the general statement (R. 952):

> "(1) The Commission erred in allowing in full in United's cost-of-service of the 100% affiliated gas purchase costs represented by United's purchases from Union Producing Company in certain major Northern and Gulf Coast Area gas fields."

Running through the discussion of alleged error in Mississippi's petition for rehearing under the title "Gas Purchase Costs" the Court will find *no specification* comparable to the objection dealt with by the Court of Appeals herein, but only a repetition of the argument originally made before

the Presiding Examiner that the *Panhandle* method was not properly applied (R. 955 quoted at p. 20 above).

Hence the "objection" (in the statutory language) was not in reality raised in the Commission at all; the observations of the Court of Appeals in dealing with the point are manifestly in error; and that court has disregarded the standard laid down by this Court in the *Interstate* case, 348 US at 499:

> "To allow a Court of Appeals to intervene here on its own motion would seriously undermine the purpose of the explicit requirements of § 19(b) that objections must first come before the Commission."

While in some circumstances such an excess of jurisdiction might be treated as venial, we submit that the grave untoward consequences which the decision below entails in all future administrative procedure under the Natural Gas Act warrants the intervention of this Court.

## CONCLUSION

The matters discussed above are believed to involve questions of federal law which individually are of such importance to the future administration and application of the Act that they should be settled by this Court. Petitioner submits that the decision below invades the statutory province reserved exclusively to the discretion and expertise of the Commission, and substitutes for the administrative discretion and judgment the judgment of the court, with its requirement for evidence and findings it deems appropriate for judicial determination.

It is believed that the court's decision nullifies and unreasonably interferes with the administrative process, and that the court below disregarded the admonition of this Court that:

> "It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial

inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important. Moreover, the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences." *FPC* v. *Hope Natural Gas Company* (1944) 320 US 591, 602).

It is accordingly urged that a writ of certiorari to review the judgment of the court below should be granted.

Respectfully submitted,

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October 22, 1957

# No. 568

Supreme Court, U.S.
FILED
OCT 22 1957
JOHN T. FEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

NO. 568

UNITED GAS PIPE LINE COMPANY,
*Petitioner,*

*vs.*

MISSISSIPPI RIVER FUEL CORPORATION and FEDERAL POWER COMMISSION,
*Respondents.*

## APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**Original Opinion of United States Court of Appeals for District of Columbia Circuit, July 8 1957**

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13199

MISSISSIPPI RIVER FUEL CORPORATION, PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

UNITED GAS PIPE LINE COMPANY, INTERVENOR

On Petition for Review of Order of the Federal Power Commission

Decided July 8, 1957

*Mr. William A. Dougherty*, with whom *Mr. Henry F. Lippitt, II*, was on the brief, petitioner.

*Mr. Louis L. DaPra*, Attorney, Federal Power Commission, of the bar of the Supreme Court of Indiana, *pro hac vice*, by special leave of Court, with whom *Mr. Willard W. Gatchell*, General Counsel, Federal Power Commission, and *Mr. Howard E. Wahrenbrock*, Assistant General Counsel, Federal Power Commission, were on the brief, for respondent.

*Mr. Thomas Fletcher*, of the bar of the Supreme Court of Texas, *pro hac vice*, by special leave of Court, with whom *Mr. C. Huffman Lewis* was on the brief, for intervenor. *Mr. Morton E. Yohalem* also entered an appearance for intervenor.

Before PRETTYMAN, BAZELON and BURGER, Circuit Judges.

PRETTYMAN, *Circuit Judge:* This is a petition to review an order of the Federal Power Commission. Two companies

are involved. United Gas Pipe Line Company, which we shall call "United", is a natural gas company operating a large natural gas transmission system. It is the vendor of the gas with which we are concerned. Mississippi River Fuel Corporation, which we shall call "Mississippi", is also a natural gas company operating a transmission system. It buys from United.

Mississippi and United had two contracts. One was made in 1929. It originally provided for the sale and purchase of gas from certain designated fields at certain designated prices and contained certain other provisions which we will discuss later. It was amended from time to time until 1949. The other contract was made in 1951. It was premised upon the construction of new pipe-line facilities by United. It obligated Mississippi to a specified demand per day and established a price different from that in the old contract.

The proceeding before the Commission began in 1948 as an investigation into the rates and charges of United. The Commission ordered United to file a restatement of its rates in a "conversion tariff", and United did so. Hearings were held from time to time, and in 1954 all parties except Misssissippi and another agreed to a compromise settlement. Further hearings were ordered and held concerning the issues raised by Mississippi. They culminated in November, 1955, in the order here under review.

Generally speaking, the features of the order which are attacked by Mississippi are: (1) The Commission allowed as a cost of service the full prices paid for gas by United to an affiliate wholly owned by a common parent;[1] (2) the

[1] The petitioner's application for rehearing specifically included this point. We do not read Federal Power Comm'n v. Colorado Interstate Gas Co., 348 U. S. 492, 99 L. Ed. 583, 75 S. Ct. 467 (1955), as requiring that the application for rehearing cite every case relied upon before the Court of Appeals.

Commission approved a rolled-in form of rate for sales to Mississippi, ignoring the prior contract commitments and the widely different costs incurred in supplying those commitments; (3) the Commission abrogated a 1945 purchase agreement (a supplement to the 1929 contract) between United and Mississippi by omitting a provision requiring United to supply such quantities of gas as Mississippi might nominate by 1961 and by inserting a minimum take-or-pay provision; and (4) the Commission directed United to file a rate schedule containing rates higher than the 1929 contract rate then on file.[2] We shall discuss these points in order.

## I

United has an affiliate, the Union Producing Company, wholly owned by their common parent. United bought in 1953, the test year, approximately 20 per cent of its gas from Union. The price was self-determined by the related companies without regulatory restriction. No cost data was submitted. In fixing the rates to be paid United by Mississippi, the Commission included the price paid Union by United as part of the cost of service.

Mississippi says the Commission erred, in that the prices paid Union were dependent only "on the subjective feeling of United's Management" and no measurement was made in this proceeding by any "objective standards". It cites a number of authorities, particularly *Western Distributing Co. v. Public Service Comm'n.*[3]

The Commission says that, while it is empowered to inquire into United's contract prices, it was not required to do so and its action here was a reasonable exercise of adminis-

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[2]An increase over the original 1929 rate became effective, subject to refund, on January 3, 1953, pursuant to an interim tariff filing by United.

[3]285 U. S. 119, 76 L. Ed. 655, 52 S. Ct. 283 (1932).

trative discretion. To have done otherwise, it says, would have meant a full-blown rate case against Union, vastly enlarging an already large and long-pending proceeding.

The gas sold United by Union came from some 592 wholly-owned wells and 365 partially-owned wells in numerous fields. It was bought under more than 300 contracts. What the examiner did was to compare the prices United paid to Union with the prices United paid to non-affiliated producers. He concluded that the weighted average price paid by United to its non-affiliated producers is substantially more than the weighted price paid Union by United. Thus, he said, the evidence showed that United-Union prices, judged by these objective standards, were not above a level conceded by Mississippi to be fair, just and reasonable for others. His conclusions were adopted by the Commission and held to be a sufficient basis for including the prices paid Union as part of United's cost of service.

The Commission stresses the inadvisability of a full-blown inquiry into Union's rates as a part of this proceeding. Ordinarily regulatory agencies do not inquire into the price structures of suppliers of goods to regulated utilities; they have a measure of duty to inquire into the reasonable fairness of the prices paid by the utility and to be allowed as costs in the determination of rates. But here the supplier (Union) and the utility (United) are corporate affiliates.

In this situation there are several important factors not ordinarily present. The United-Union prices were not arm's-length transactions. From time to time these prices between the two affiliates were increased. At least part of the increase authorized by the Commission in United's prices to Mississippi arose from these increases in United's payments to Union. If the United-Union increases were bona fide increases in costs incurred by Union in acquiring gas, that would be one thing; but, if they were merely a device for siphoning potential profits from one affiliate to

another, for transferring amounts from an advantage to customers to an advantage for stockholders, that is another thing. If the initial contracts between Union and its producers (some of which were wholly-owned affiliates) were fair and reasonable, the advantage thus created by their relatively low prices would belong in part at least to the customers of Union and thus to the customers of its affiliate, United; it could not be shunted by a mere intra-corporate entry into accounts available to stockholders only. A mere comparison of such prices with prevailing prices would not sufficiently justify the transactions.

The Commission's order in the case at bar was issued shortly before the opinion of this court in *City of Detroit, Michigan* v. *Federal Power Comm'n.*[4] There we reviewed an order which allowed a pipe-line company to evaluate gas produced in its own wells in terms of the "fair field" or "weighted average arm's-length" price which that gas would bring on the open market if sold by the pipe-line company in the producing area and to include the resulting amount in operating expenses to be recovered through the rates. We rejected this use of the field price, because the Commission record did not show that such an allowance was reasonably necessary to serve any stated ends of the Natural Gas Act. A 100 per cent affiliate stands in the same position as does the integrated producing "arm" of a pipe-line company. Therefore the Commission must on the record either relate the use of the weighted average arm's-length prices to legitimate ends of the Act or examine far enough to determine whether there is economic justification for the price increases paid by Union to affiliated producers.

We emphasize that we are dealing with a single corporate structure, which includes the parent, the two affiliated transmission subsidiaries (supplier and customer to each other),

[4] 97 U.S. App. D.C. 260, 230 F. 2d 810 (1955).

and the producers. We think the Commission must at least inquire into the reality of the price increases paid by Union to its wholly-owned and partly-owned affiliate producers, which increases were in part reflected in the United-Union prices. By this we mean that to include the increased prices in the costs of United the Commission must at least determine that the increases had sufficient factual economic justification; it must ascertain that they were not mere bookkeeping or intra-corporate-system adjustments. We must remand the case for that inquiry. We do not hold that a full-blown inquiry into the rates of Union is necessary. Subsequent developments in the proceeding may or may not indicate such a necessity.

II

Mississippi says its contracts with United require a separate determination of rates under each contract. It says that, until the Commission determines, upon a proper record, the public interest requires abrogation of the contracts, the separate contractual basis must be maintained. This result, it says, is required by the decisions in the *Mobile*[5] and *Sierra Pacific*[6] cases.

The so-called "old contract", the one of 1929, originally named the fields from which the purchased gas was to come. It named a price, later raised until it was a forty-five-cent demand charge and a five-cent commodity charge. Amendments to the contract in 1945 and 1949 did not repeat the field designation but merely specified that the gas be transported through a designated pipe line proposed to be constructed by United from the Carthage field in Texas to a

[5] *United Gas Co. v. Mobile Gas Corp.*, 350 U. S. 332, 100 L. Ed. 373, 76 S. Ct. 373 (1956).

[6] *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U. S. 348, 100 L. Ed. 388, 76 S. Ct. 368 (1956).

named point (Sterlington) in Louisiana. This amendment was intended by the parties, the examiner found, to assure systemwide availability of gas for Mississippi. The so-called "new contract" of 1951 did not specify the source fields of the gas to be purchased under it.

Evidence was presented to show, and the Commission found, that United's properties are integrated and interconnected and that the two lines from Sterlington to Perryville, the sole delivery point to Mississippi, were tied into all sources of supply running into the Monroe District. The Commission found that allocation to separate lines and sources of supply solely for Mississippi was not feasible, that the gas was commingled before delivery to Mississippi, and that continuance of two rates for the same service at the same point was not in the public interest and would result in unreasonable differences.

The Commission fixed a single rate of seventy-five-cent demand and ten-cent commodity charge for all sales to pipe-line companies in the Central Rate Zone served from United's transmission system. The rate under the "old" contract with Mississippi had been forty-five cents and five cents and under the "new" contract a dollar and thirty cents and twelve and a half cents. The net result of the single "rolled-in" rate is computed to be an increase in rates to be paid United by Mississippi of some $1,350,000 a year[7] over pre-investigation rates.

The Commission has power under Section 5(a) of the Natural Gas Act[8] to determine a just and reasonable rate or contract affecting rates whenever it finds that an existing

[7] The Commission makes reference in its brief to an annual reduction of nearly $1,000,000. But that was computed on the basis of an increase allowed to be put into effect by United, subject to refund, during the proceeding. That tentative increase became effective January 3, 1953. It is part of the total result here under dispute.

[8] 52 STAT. 823 (1938), 15 U. S. C. A. § 717d(a).

rate or contract affecting rates is unjust, unreasonable, unduly discriminatory, or preferential. In the case at bar the findings of the Commission were that the two rates on the separate contracts "are not in the public interest", that the continued existence of two rate schedules would constitute "maintenance of an unreasonable difference", and that compliance with Section 4 of the Act would be effected by a filing by United which would "eliminate unjust, unreasonable and unduly discriminatory rates to Mississippi" and would apply to Mississippi the same rates applicable to other customers. We think these findings adequately met the statutory prescription for underlying findings in Section 5(a).

We get the impression that Mississippi does not contest too strenuously the result of the Commission's order in dollars at this point but that the thrust of its argument is that it is entitled to the maintenance of its two contracts with separate rates rather than a single rate for all purchases. It does not specifically proclaim its disinterest in the dollar result, but it prepared and presented an exhibit which seemed to show that a seventy-five-cent demand and a nine-cent commodity charge under the "old" contract and a dollar-and-fifteen-cent and ten-cent charge under the "new" would yield the same amounts.

Mississippi makes two principal claims of damage to it. It claims that the single rate hurts it more than it hurts other purchasers from United since a larger proportion of its purchases were under the older, lower contract rates whereas the greater part of the others' purchases were under newer, higher contract rates. Again, the commodity price in the single rate is twice that in the old contract rate, and Mississippi claims that, because rates to interruptible industrial consumers are pegged largely on the commodity rate, the doubled rate is particularly injurious to that phase of Mississippi's operations. Sales direct to industry are not

regulated by the Commission, but it can influence these rates by its allocation of costs to industrial business as part of its determination of rates over which it has jurisdiction. A low commodity rate would enable Mississippi to meet competition from other fuels without jeopardizing its profits from its jurisdictional sales. These seem to be the principal reasons for Mississippi's opposition to the single rate. While they are potent from the standpoint of that company, they do not avail too much from the standpoint of general regulation and the public interest.

Mississippi argues that the Commission was required by the *Mobile* and *Sierra Pacific* cases, *supra*, to find specifically that the old contract rate of forty-five cents and five cents was itself unlawful before it could order it changed. Those cases each dealt with a single existing contract. The Court held that before the Commission could cause such a contract rate to be raised it must make the findings required by the statute. In the case at bar there are two existing contracts, one with a low rate and other with a high one. The Commission did not find specifically that the low rate was unreasonable, etc. It found that the two contracts, with two rates, were not in the public interest and would maintain an unreasonable difference. It seems to us that the action of the Commission was within the scope of the statute and within the doctrine of the *Mobile* and *Sierra Pacific* cases, even though not within the factual bases of those opinions. We think that in a situation involving two contracts, at different prices, for different portions of a single service, it is within the power of the Commission to combine the two contracts even though the combination results seemingly in a technical breach of the contractor's or the public's rights under the lower priced of the two contracts.

We think the record amply supports the Commission's conclusion that the two separate rates under the "old" and "new" contracts between United and Mississippi should give

way to the single rate applicable to all customers. We affirm its order on that point.

## III

Mississippi says the Commission erred in omitting an "old" contract provision requiring United to supply it with additional quantities of gas. The amendment of 1945 to that contract provided that any time prior to May 1, 1961, Mississippi could call upon United for increased quantities of gas and thereafter United would furnish such increased amounts. In 1949 Mississippi requested United to supply 65 per cent of its requirements instead of the prior 40 per cent, and United complied. When United filed the tariff which became the basis for the Commission's present order, it omitted that clause of the contract, and the Commission approved the omission.

Mississippi says the omission is seriously prejudicial because United has always been the "backbone" of its source of supply and its right until 1961 to require United to supply its additional requirements is an integral part of its plans and a basis of reliance by its customers for an adequate supply. It says that under the Commission's regulations United could not unilaterally abrogate the clause in question.

The Commission says the clause accorded Mississippi a preferential right over all other customers of United and should therefore be eliminated. It says the omission was proper under the regulation.[9] It says that United could not possibly obligate itself to satisfy the full future requirements of Mississippi, let alone all of its customers.

The Commission further says the contract clause in question did not mean what Mississippi claims it meant but meant only that Mississippi could make one nomination of

[9] 18 C.F.R. § 154.85.

additional supply. It says this interpretation of the contract is demonstrated by Mississippi's own conduct: in 1950, when it needed more gas, it purchased from independent producers, and again in 1951, when it again needed more gas, it made a new contract with United instead of exercising the right it now says it had under the existing contract. This conduct, says the Commission, is inexplicable under Mississippi's present reading of the contract clause. Lastly, the Commission says if the clause meant what Mississippi claims it meant it would be within the plenary power of the Commission under Section 7(e) of the Act as amended.[10]

Without considering all the various contentions on the point, we think the clause in question, in the presence of dual contract rates, would create a discriminatory preference and therefore could properly be omitted from the approved tariff. Since we have approved the Commission's order eliminating the rate differential, the point loses much of its importance. We affirm the Commission's order on this point.

The Commission included in United's tariff a 72 per cent minimum take-or-pay clause. This would require Mississippi to pay a commodity charge measured by 72 per cent of the maximum daily quantity. The same requirement was imposed upon all of United's customers. Mississippi's objection is that this could have a very adverse effect, "if in a depressed business condition or a bad competitive position we were unable to sell as much gas as would be required to keep that old contract at 72 percent."

We think Mississippi's fears are not sufficient basis for a differentiation between it and all other customers. We accept at full value the Commission's assurance that "if, in the future, the provision should be considered by petitioner to be, in fact, onerous to it, the Act provides relief." Upon that basis we affirm the Commission on this point.

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[10] 56 Stat. 83 (1942), 15 U. S. C. A. § 717f(c).

*Original Opinion of United States Court of Appeals for District of Columbia Circuit, July 8 1957*

## IV

As we have already pointed out, the rates under Mississippi's "old" contract, after the increase of January 3, 1953, were sixty-five cents demand and nine cents commodity. The over-all rate ordered by the Commission was seventy-five cents and ten cents. Mississippi says this was an increase in rates forbidden by Section 5(a) of the Act.[11] It says the Commission virtually, if not actually, ordered United to file the new schedule. Section 5(a) provides in pertinent part:

> "That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; * * *."

As we have seen, while the rates authorized by the Commission were higher than those in the "old" United-Mississippi contract, they were lower than those in the "new" contract. The whole action was to substitute a single rate for two separate rates found by the Commission to be unduly preferential. The Commission had a positive duty under the basic provisions of Section 5(a) to eliminate preferential discriminations. While the dollar amount of the charges authorized by the Commission was greater than the amount of the contract rates, it was less than the dollar amount shown by the conversion tariff filed by United and effective January 3, 1953. United's tariff would have increased the charges to Mississippi by some $2,400,000. The eventual increase under the Commission's order was, as we have noted, some $1,350,000.

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[11] *Supra* note 7.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,199—April Term, 1957.

MISSISSIPPI RIVER FUEL CORPORATION,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent,

UNITED GAS PIPE LINE COMPANY,
Intervenor.

On Petition for Review of Order of the Federal Power Commission.

Before: Prettyman, Bazelon and Burger, Circuit Judges.

## Judgment

This case came on to be heard on the record from the Federal Power Commission, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the order of the Federal Power Commission on review in this case be, and it is hereby, vacated, and that this case be, and it is hereby, remanded to the said Federal Power Commission for further proceedings in conformity with the opinion of this Court.

Dated: July 8, 1957.

Per Circuit Judge Prettyman

Separate opinion by Circuit Judge Bazelon concurring in part and dissenting in part.

*Original Opinion of United States Court of Appeals for District of Columbia Circuit, July 8 1957*

We think the above-quoted proviso in Section 5(a) did not prohibit the Commission from eliminating the dual-rate structure of the two separate contracts when it found that system to be unduly preferential. Any over-all rate substitute would necessarily have to be higher than the very low rate of the "old" contract and higher even than that rate as adjusted in January, 1953. The increase in that rate was merely an essential part in the elimination of the dual-rate structure. We think it was authorized by Section 5(a) taken as a whole and as applied to the peculiar circumstances of this case. We agree with the Commission on this point.

Because of the necessity for further findings on Point I the Commission's order will be vacated and the case remanded for further proceedings.

BAZELON, *Circuit Judge*, concurring in part and dissenting in part: I agree that the order under review must be vacated for the reason stated in Part I of Judge Prettyman's opinion. But, from the balance of the opinion, holding the order otherwise proper, I am compelled to dissent.

The Commission's order, in effect, if not in terms, authorized United unilaterally to abrogate its two contracts with Mississippi, replacing them by new rates and conditions—or, at least, to reform the two contracts. My brethren conclude that the Commission had the power to do what it did under § 5(a) of the Natural Gas Act and that it made the findings required by that section to support its action. I agree that § 5(a) gives the Commission authority "to set aside or modify any rate or contract which it determines, after hearing, to be 'unjust, unreasonable, unduly discriminatory, or preferential.'" *United Gas Co.* v. *Mobile Gas Corp.*, 350 U.S. 332, 341 (1956). I do not agree, however, that the Commission made the findings necessary to support an exercise of § 5(a) power.

*Original Opinion of United States Court of Appeals for District of Columbia Circuit, July 8 1957*

The Supreme Court held in *Mobile, supra*, that a utility may not, by filing a new rate under § 4 of the Natural Gas Act, unilaterally change a rate to which it has bound itself by contract. The contract rate remains in force until the parties change it by agreement or until the Commission, after hearing under § 5(a), determines it to be unreasonable. A Commission determination that the unilaterally proposed new rate is a reasonable one does not amount to a determination that the old rate is unreasonable. *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U. S. 348, 354-55 (1956).[1] If the contract rate is to be determined to be legal, it must be upon a finding, supported by evidence, that the rate adversely affects the public interest—"as where it might impair the financial ability of the public utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory." *Id.* at 355.

Here there are two contract rates. United's conversion tariff proposed a continuation of a two-rate schedule, but an increase of the rate specified in the earlier of the two contracts. The Commission rejected this proposal and ordered filing of a single rate, higher than the rate of the first contract and higher even than the rate to which United proposed to increase it,[2] but lower than the rate of the second contract.

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[1]Affirming our decision in *Sierra Pacific Power Co. v. Federal Power Comm'n*, 96 U. S. App. D. C. 140, 223 F. 2d 605 (1955). We there pointed out, citing *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U. S. 246, 251 (1951), that "[s]ince 'statutory reasonableness is an abstract quality represented by an area rather than a pinpoint,' the statutory purpose may be satisfied by more than one rate." 96 U. S. App. D. C. at 142, 223 F. 2d at 607.

[2]Mississippi argues that, since § 5(a) forbids the Commission to order a rate increase "unless such increase is in accordance with a new schedule filed by such natural gas company . . . ," the order is invalid with respect to the gas purchased under the first contract. But, as the Supreme Court said in *Mobile*, "if the Commission, after

*Original Opinion of United States Court of Appeals for District of Columbia Circuit, July 8 1957*

The Commission's order adopted the examiner's Initial Decision of July 18, 1955, with a modification to which I shall refer later. That decision, which occupies 111 pages in the joint appendix, culminates in 24 combined "Findings and Conclusions." In No. 2, the examiner declared that "United's rates, charges, classifications, and services . . . are subject to the jurisdiction of the Federal Power Commission *under the provisions of Section 4 of the Natural Gas Act.*"[3] In No. 17, he found the "just and reasonable" rates to be those earlier agreed upon in the settlement to which Mississippi was not a party, such dates being "the same as made to all other pipe-line customers served from United's transmission system in the Central Rate Zone." In No. 19, he said that to have two rates to Mississippi would "constitute the maintenance of an unreasonable difference in rates and charges for the same service at the same delivery point, contrary to the provisions of *Section 4(b) of the Natural Gas Act.*" Finally, in No. 20, he declared that "[c]ompliance with *Section 4 of the Natural Gas Act* will be effected by the making of a filing by United which will eliminate unjust, unreasonable and unduly discriminatory rates to Mississippi and which will apply to Mississippi the same rates which are now applicable to all its other pipe-line customers served from United's transmission system in the Central Rate Zone."

A fair reading of the Initial Decision supports the following observations:

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hearing, determines the contract rate to be so low as to conflict with the public interest, it may under § 5(a) authorize the natural gas company to file a schedule increasing the rate." 350 U. S. at 345. The order here, instead of *authorizing* the filing of a new schedule, *orders* it. Since it is obvious that United wishes to file such a schedule, the use of "order" instead of "authorize" is in this case insignificant. Hence, if the Commission had made a § 5(a) determination to support its order, I would have no difficulty sustaining the order.

[3] Emphasis supplied throughout.

*Original Opinion of United States Court of Appeals for District of Columbia Circuit, July 8 1957*

*Item 1*—The examiner treated the proceeding before him as one under § 4 to determine the reasonableness of proposed new rates; not one under § 5(a) to determine the reasonableness of existing rates.

*Item 2*—He made no findings as to the reasonableness of the existing rates.

*Item 3*—He concluded that the proposed rates to Mississippi, to be reasonable, must not be different from the rates to United's other customers in the same rate zone.

*Item 4*—He concluded that maintenance of dual rates to a single customer for the same service at the same point is unreasonable *per se*.[5]

Items 1 and 2 above are, in my view, enought to call for reversal of the Order under the decisions in *Mobile* and *Sierra*, *supra*.[6] It is true that the Commission, in adopting the examiner's decision as its own, did seek to bring it within *Mobile* and *Sierra*[7] by amending Finding No. 2 to cite § 5 of the Natural Gas Act, as well as § 4. This afterthought cannot suffice, however, for the findings which would be necessary to support a § 5 determination are altogether lacking. See

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[5]The Commission also relies upon the examiner's Finding and Conclusion No. 13 that all gas delivered by United to Mississippi was commingled before delivery, so that a two-rate system was not feasible. To the extent that this is a finding, rather than a conclusion, it completely ignores the facts that (1) as of the date of the Commission's order United was in fact delivering gas to Mississippi on a two-rate schedule; and (2) United's proposal was for a continuation of a two-rate schedule. What metering system was employed by the parties to compute payments does not appear. That there was a system which they considered feasible seems clear.

[6]I would hold the Commission's order as ineffective to change the other terms of the contract, referred to in Part III of Judge Prettyman's opinion, as it is to change the rates.

[7]*Mobile* and *Sierra* had not yet been decided by the Supreme Court when the initial and final decisions in this case were issued. Both cases had, however, been decided by the respective circuit courts of appeals.

*Sierra Pacific Power Co. v. Federal Communications Comm'n*, 96 U. S. App. D. C. at 144, 223 F. 2d at 609.

Even if Items 1 and 2 were not enough to dispose of this case and we were required to address ourselves to the sufficiency of the determinations referred to in Items 3 and 4, I would hold that they do not support the order.

As to Item 3, I think the Supreme Court pointed out clearly enough in *Mobile* that mere difference in rates between customers is not unreasonable under the Natural Gas Act, as it is under the Interstate Commerce Act. "The Natural Gas Act . . . recognizes the need for private contracts of varying terms and expressly provides for the filing of such contracts as a part of the rate schedules." 350 U. S. at 345.

Similar considerations, I think, apply to Item 4. If the nature of the industry is such as to cause a gas buyer to make a long-term contract with a pipe-line for his requirements, it seems obvious that the buyer may revise his conception of his future requirements and seek to contract for additional gas and the seller, in those circumstances, may ask a higher price under the new contract. There is as little wrong with two contract rates to one customer as with different contract rates to different customers. Any of these rates may be stricken as unreasonable, if found so to be in a proceeding under § 5(a). But, in neither case are the rates unreasonable *per se*.

## Supplemental Opinion of United States Court of Appeals for District of Columbia Circuit, September 19 1957

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,199 April Term, 1957

MISSISSIPPI RIVER FUEL CORPORATION,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent,

UNITED GAS PIPE LINE COMPANY,
Intervenor.

Before: Prettyman, Bazelon and Burger, Circuit Judges, in Chambers.

Upon consideration of petitioner's petition for rehearing and clarification of the opinion of this Court, of respondent's petition for rehearing and clarification of the opinion of this Court, and of intervenor's petition for rehearing, it is

ORDERED by the Court that the aforesaid petitions for rehearing be, and they are hereby, denied.

It is FURTHER ORDERED by the Court that insofar as petitioner petitions for clarification of the opinion of this Court and respondent petitions for clarification of the opinion of this Court, said petitions be, and they are hereby, granted and that that portion of the opinion promulgated July 8, 1957, beginning "In this situation there are several", near

*Supplemental Opinion of United States Court of Appeals for District of Columbia Circuit, September 19 1957*

the bottom of page 4 of the slip print, and continuing to the end of part 1 of the opinion, is amended to read as follows:

> In this situation there are several important factors not ordinarily present. The United-Union prices were not arm's-length transactions. From time to time these prices between the two affiliates were increased. At least part of the increase authorized by the Commission in United's prices to Mississippi arose from these increases in United's payments to Union. If the United-Union increases were bona fide increases in costs incurred by Union in acquiring gas, that would be one thing; but, if they were merely a device for siphoning potential profits from one affiliate to another, for transferring amounts from an advantage to customers to an advantage for stockholders, that is another thing. If the initial contracts between Union and United were fair and reasonable, the advantage thus created by their relatively low prices would belong in part at least to the customers of United; it could not be shunted by a mere intra-corporate entry into accounts available to stockholders only. A mere comparison of such prices with prevailing prices would not sufficiently justify the transactions.
>
> The Commission's order in the case at bar was issued shortly before the opinion of this court in *City of Detroit, Michigan* v. *Federal Power Comm'n.*[4] There we reviewed an order which allowed a pipe-line company to evaluate gas produced in its own wells in terms of the "fair field" or "weighted average arm's-length" price which that gas would bring on the open market if sold by the pipe-line company in the producing area and to include the resulting amount in operating expenses to be recovered through the rates. We rejected this use of the field price, because the Commission record did not show that such an allowance was reasonably necessary to serve any stated ends of the Natural Gas Act. A 100 per cent affiliate stands in the same position as does the integrated producing "arm" of a pipe-line company. Under the doctrine of

[4] 97 U. S. App. D. C. 260, 230 F. 2d 810 (1955).

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the *City of Detroit* case United could not, on the record as it is now before us, use as costs the fair field price of gas produced by its affiliate, Union; a reconsideration by the Commission under the principles laid down in that case would be necessary.

But United did not seek to use fair field prices; it used contract prices fixed in contracts with its affiliate, and measured the reasonableness of those contract prices by the fair field prices. From time to time the affiliated contractors increased the prices applicable to sales between them. We think the Commission could no more test the reasonableness of interaffiliate prices by the use of fair field prices (without more) than it could allow as costs the fair field prices (without more). To be included in United's costs, increases in the interaffiliate prices must have some factual economic justification. By way of extreme example, if Union's production and delivery costs remained static *and it* increased its prices to United, that much of the corporate-system revenues would be shunted from United to Union. If, in this example, the full new prices were allowed as costs to United, one of two results would ensue. If United's prices to its customers had been yielding no more than a fair return, those prices would have to be increased to compensate for the increased costs. If United's prices had been yielding more than a fair return, so that a reduction in those prices was a possibility, that reduction would be forestalled by the increase in costs. Thus, by the allowance, in our example, of the increased Union-United prices as costs of United, the amount of the increase would be shunted from a potential benefit to the corporate-system customers (direct customers of United) to a benefit to the corporate-system stockholders. To a less extent any increase in the interaffiliate prices (Union-United) not reflecting increases in Union's costs or expenses would represent a shunting of benefit from customers to stockholders. We do not say that all benefits, in total amounts, due to initial advantageous arrangements at the wells or to astute original operational arrangement belong to the customers and none to the stockholders. But we

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do say that the whole of such benefits, as measured by increasing fair field prices, cannot be assigned to the stockholders by unexamined increases in interaffiliate prices accepted as costs of the affiliate-purchaser. The same course of reasoning which we followed in the *City of Detroit* case is applicable here. Therefore we think the Commission must at least inquire into the factual justification for the price increases paid by United to Union. By this we mean that to include the increased prices in the costs of United the Commission must at least determine that the increases were justified by reason of Union's costs or by reason of some other stated and of the Natural Gas Act; the Commission must ascertain that they were not mere bookkeeping or intra-corporate-system adjustments. We must remand the case for that inquiry. We do not hold that a full-blown inquiry into the rates of Union is necessary. Subsequent developments in the proceeding may or may not indicate such a necessity.

*Per Curiam.*

Dated:

# Natural Gas Act of 1938, 52 Stat. 821

. . . .

[3] RATES AND CHARGES; SCHEDULES; SUSPENSIONS OF NEW RATES

SEC. 4. (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulations, or contract relating thereto, except after thirty days'

notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-

gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible [52 Stat. 822 (1938); 15 U. S. C. 717c (1946)]

FIXING RATES AND CHARGES; DETERMINATION OF COST OF PRODUCTION OR TRANSPORTATION

SEC. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,*

*That* the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

. . . .

REHEARING; COURT REVIEW OF ORDERS

SEC. 19 (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.

(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing

*Natural Gas Act of 1938, 52 Stat. 821*

in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

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## Presiding Examiner's Opinion Filed July 18 1955

[7766] Filed July 18, 1955

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

## Decision

Docket Nos. G-1142, G-2019, et al.

In the Matter of
UNITED GAS PIPE LINE COMPANY

UPON AN IVESTIGATION OF RATES AND CHARGES PURSUANT TO THE PROVISIONS OF SECTION 5(a) AND A FILING FOR AN INCREASE IN RATES PURSUANT TO THE PROVISIONS OF SECTION 4 OF THE NATURAL GAS ACT

. . . .

[7768] BINDER, Presiding Examiner: These proceedings involve the determination of just and reasonable rates and charges, within the meaning of the Natural Gas Act of 1938 (the Act) for the delivery and sale of natural gas for resale by United Gas Pipe Line Company (United) to Mississippi River Fuel Corporation (Mississippi)

. . . .

[7774] UNITED'S AFFILIATIONS, SIZE, GROWTH AND OPERATIONS

Clear understanding of what the issues are, how they arose, and how they should be resolved will be aided by a brief explanatory statement concerning United's system, including its affiliations, size, recent history, growth, and operations. The relative position of Mississippi in the picture

of United's rate structure, as a whole, may thus be seen in correct perspective.

United Gas Corporation (United Gas) has owned all the stock of United and of Union Producing Company (Union) since 1937. Union is a producing and exploration company. United is a pipe-line company, very largely engaged in transmission activities. United Gas, in addition to holding the securities of United and Union and other companies, is engaged in the local gas distribution business. The principal officers and directors of United Gas are the principal officers and directors of United and Union. United Gas is the parent of United and Union, and controls both companies.

United is one of the largest pipe-line companies in the world, serving large markets in Texas, Louisiana, Mississippi, Alabama, and Florida. It also supplies part of the requirements of transmission lines serving the Appalachian area, the Atlantic seaboard, and portions of the Mid-continent area. It owns and operates approximately 1,200 miles of field lines and approximately 8,000 miles of main Transmission lines. United purchases, transmits, and sells natural gas at city borders, to other pipe-line companies, to gas distributing utilities, to large industrial companies for their own consumption, and in



addition, has some plants for the separation of gasoline and liquid hydrocarbons from the gas in the line. United purchases natural gas from more than 200 gas fields and from hundreds of gas producers in Texas, Louisiana, and Mississippi who are unaffiliated with it. In addition, United purchases substantial quantities of natural gas from Union, an affiliate.[7] It contracts (both with unaffiliated producers

[7]See 10 FPC 35, referring to United Gas Corporation as the parent of United Gas Pipe Line Company, and Union Producing Company as an affiliate of United Gas Pipe Line Company.

and with Union) for gas purchases which cover various periods of time and various prices.

In recent years and particularly since the advent of long distance transmission pipe lines, competition in the purchase of gas has increased very substantially. During these years, United has experienced increasing competition in negotiating contracts for the purchase of gas from producers because of the increase in the number and size of new pipe-line companies which are also seeking to augment their supplies. In addition, the tremendous increase in the demand for natural gas has been a major factor in the increase in price. These and other factors have impelled United to pay higher prices to obtain new contracts than such company paid previously and also to pay higher prices in connection with the extension of old contracts. The result has been a continuing increase in the price of gas to United during the years this matter has been under consideration. The volume of United's gas purchases for the year 1952 as adjusted for known changes runs well over a trillion cubic feet.

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There is nothing to indicate any diminution in the demand for natural gas in the United States, nor is there any evidence in this record to indicate that gas prices will be lower in the immediate future. Because of the increasing demand for natural gas and despite the rise in the price of gas in recent years,[8] United has engaged and is continuing to engage in the expansion of its system, and in the pursuit of relationships with gas producers which it considered would assist it to maintain and improve the sources from which it could obtain its gas requirements.

A large expansion occurred following the grant of a certificate of public convenience and necessity to United in Docket No. G-1447.[9]

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[8]See Exh. 161.

[9]See United Gas Pipe Line Company, 10 FPC 35.

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Since the effects of the expansion of United's facilities authorized in Docket No. G-1447 are important to the rate-making problems dealt with herein, it appears advisable to make somewhat extended reference to the Commission's decision in that docket as it related to four matters: (1) What the expansion was, (2) the purposes for which the Commission authorized such expansion, (3) the rates made applicable to Mississippi in such decision, and (4) the dynamic character of United's history, growth operations and development of its gas reserves.

Specifically, the Commission described the proposal made by United in Docket No. G-1447 at page 37 of its opinion as follows:



"* * * the construction of approximately 1,005 miles of gas transmission pipe lines and appurtenant facilities consisting of two major pipe lines, one in the eastern and one in the western portion of its system. The west line would consist of approximately 540 miles of 30-inch, 26-inch, and 24-inch diameter pipe, extending from the Aqua Dulce Field in southern Texas northeasterly to the vicinity of Perryville, Louisiana. Compression facilities aggregating 42,200 horsepower are proposed to be installed on this line. The east line would consist of approximately 305 miles of 30-inch, 26-inch, 24-inch, and 20-inch diameter pipe, extending from Pure Oil Company's offshore acreage * * * in the Eugene Island area of the Gulf of Mexico, in a northeasterly direction to a point near Kosciusko, Mississippi, with 20,800 horsepower compression. Three supply and delivery lines, consisting of approximately 179 miles of various diameter pipe would extend from southern and southeastern Louisiana and Mississippi gas fields to various points of connection with the east line.

"The proposed construction is designed to increase United's system capacity by 920,000 Mcf per day, to an estimated total of 3,805,200 Mcf per day inclusive of gas transported for and exchanged with others * * *"

(2) Purpose of the Expansion:

In connection with the purposes for which the facilities described above were to be constructed, the Commission stated at page 41:

> "The facilities proposed in Docket No. G-1447 are intended to accomplish these general objectives: (1) Provide for a more balanced withdrawal and distribution of gas supply from presently-connected and from new gas fields; (2) increase the flexibility of the present system; and (3) enable United to meet the increased requirements of present customers and provide additional capacity required by the demands of new customers proposed to be served. It is estimated that with the proposed additional capacity, United would be able to provide for existing and future peak requirements in 1952-53, with the exception of the Wichita Falls District in which it is estimated that a deficiency of 27,400 Mcf will occur on the peak day in 1952-53. It is not now proposed that the Wichita Falls District will be connected with the rest of the system.[10]



> "In addition to accomplishing these general objectives, United proposes to make new sales of gas to Texas Eastern Transmission Corp. (Texas Eastern) and to Mississippi River Fuel Corp. (Mississippi River) * * *
>
> "United's proposed project is designed for a better balancing of gas supply in relation to the concentrated markets which United now serves and intends to serve. A relation of estimated requirements by districts and points of delivery in such districts to the location of United's various major sources of gas supply, indicates the need for additional facilities if the system is to be operated in the manner contemplated. The estimated peak-day requirements in volumes of gas, exclusive of gas transported for and exchanged with

[10]United has disposed of its Wichita Falls property since the issuance of the Commission's Opinion referred to above in Docket No. G-1447.

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others, which could be made available through existing and proposed facilities to meet such requirements, by districts, is shown to be as follows:"

(A table is then shown setting forth the requirements of all districts of United except Wichita Falls.)

The opinion continues:

"* * * We think that this concentration of major sources of gas supply in the southern portion of United's system requires the proposed transmission facilities in order to properly balance markets and supply in the existing system, and for the transportation of large volumes of gas from the southern part of the system to meet the requirements of customers now served and proposed to be served in the Monroe and Jackson districts.

"The system flexibility which United contends would result from construction of the proposed facilities relates to the ability to shift available supplies of gas over the system within limits. The overall operational flexibility which results from interconnections between existing and new facilities. United concedes that prudent engineering and operating practice would suggest the advisability of establishing interconnections in certain locations between the existing and proposed facilities, but it has not proposed to do so. We think that in order to assure more flexibility in operation and better service on the system, interconnections for emergency use should be made between existing and proposed new facilities * * *

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"We are of the opinion, and find, that the facilities proposed are reasonably adequate and necessary for the service proposed to be rendered thereby. * * *

"Mississippi River, whom United proposes to serve with additional volumes of gas through the proposed facilities, presented evidence tending to show that the annual requirements of that company as presented by United are slightly high. This evidence shows that

> although Mississippi River presented evidence in the hearings upon its application in Docket No. G-1281 to the effect that it would purchase approximately 150,000 Mcf per day from United on a 72% load factor, the requirements of its customer companies have increased at a greater rate than had been previously anticipated. However, the evidence in this record shows that Mississippi River doubts that its requirements will equal 150,000 Mcf per day on a 95% load factor, as shown by United, because it presently is investigating the possibilities of underground storage and of obtaining gas either from new sources or from renewal of other supply contracts.[11]

(3) The Rates Made Applicable to Mississippi:

The conclusion that the Commission in effect fixed the rates set in G-1447 at rates which were to be reconsidered upon the conclusion of the overall investigation of United's rates which was taking place in Docket G-1142 is made clear by the following language at page 45 of the Commission's opinion:

> "There is now pending at Docket No. G-1442 (sic) an investigation into the rates charged by United, and we therefore think it proper at this time to consider only the rates proposed to be charged for the new sales to Texas Eastern and Mississippi River. It is expected that the Commission's rate investigation will be concluded before the facilities herein authorized for the sale to Texas Eastern and Mississippi River are completed and that we will have considered on that record not only United's rates for existing sales but also the rates for the two new ones. * * *
>
> "It appears from the record that United assumed a systemwide rate of return of 6 per cent and then designed a rate for the deliveries to Texas Eastern and to Mississippi River which would result in the revenues required to reach the assumed over-all return

[11] Since the issuance of the Commission's decision in Docket No. G-1447, Mississippi has contracted for 150,000 Mcf per day.

United submitted a systemwide cost of service study including a 6 per cent rate of return which shows an average cost of 13.16 cents per Mcf on the



system. However, the record shows there is a wide disparity in rates on the system, both above and below the indicated present average cost of service; and in many instances United presently is making sales at a rate less than the average cost of purchased gas. *The conclusion of the pending investigation of United's rates should eliminate undue discrimination and may result in a revision of the company's rate structure.*" (Emphasis supplied)

These quotations from the Commission's Opinion make it very clear that the construction sought to be made by United and authorized in Docket No. G-1147 by the Commission was for general system purposes, and that the Commission intended to review the rates fixed in such docket for the sale of gas to Mississippi and other companies upon the conclusion of the Commission's investigation pending at Docket No. G-1142. (See 10 FPC at pages 45 and 46). Indeed, the language employed by the Commission gave direct notice that the rates which were being made applicable to Mississippi in Docket No. G-1147, i.e., the PL-2 rates, were rates to be reconsidered in the investigation in Docket No. G-1142, particularly in the light of United's rate structure as a whole, and that the conclusions reached as a result of such investigation might "result in a revision of the company's rate structure."

(4) The Dynamic Character of United's Growth and Operations:

The Commission referred to the dynamic character of United's history, growth, and operations, and discussed its gas reserves in its opinion in Docket No. G-1147 (p. 18) in the following language:

"The record shows the operating history of United for the past 20 years with respect to its gas purchase contracts with companies other than its affiliate, Union Producing Company. On January 1, 1930, United had 145 gas purchase contracts with non-affiliated producers, as compared with 402 such contracts as of November 1, 1950. On January 1, 1930, United was receiving gas from 27 fields under such contracts as compared with 207 fields on July 1, 1950, and



during the intervening period deliveries were commenced under 756 contracts and deliveries ceased under 456 contracts. Cessation of deliveries for most of the contracts terminated was a result of the depletion of the supply.

"During the period of 1945 through the first 10 months of 1950, in which there has been extensive growth in interstate gas transmission lines with a corresponding increase in competition for natural gas reserves, United entered into 343 new gas purchase contracts, which is almost three times as many contracts as were entered into during the six-year period of 1939 to 1944. In the period from 1945 to November 1, 1950, United extended the term of 178 of its gas purchase contracts as compared with 54 contracts which were extended during the 15 years prior to that time. The 178 extensions of contracts were for the most part for periods of 10 years. Between November 1 and December 31, 1950, United entered into eight new gas purchase contracts for substantial reserves, and extended the term of 15 gas purchase contracts.

"On the basis of the record, United has increased its recoverable reserves from an estimated total of 2.3 trillion cubic feet in 1930 to over 20 trillion cubic feet as estimated by Ralph E. Davis, or 16.1 trillion cubic feet as estimated by the Staff as of July 1, 1950, although the Company sold almost 6 trillion cubic feet of gas between 1930 and 1949

> "The record also shows that United has never had to cancel a sales contract because of inability to renew a gas purchase contract."

In connection with the dynamic character of United's growth, it may be observed that since the proceeding in Docket No. G-1447 was concluded the records of the Commission show that it has issued 19 certificate orders authorizing increases in United's facilities ranging from comparatively small amounts to over 5½ million dollars and totalling in excess of 18½ million dollars.[3]

* * * *

COST OF GAS PURCHASED

The Staff's brief, among other things, summarizes the method by which it arrived at its independent determination of United's purchased gas cost and it reads, in part, as follows:

> Starting with normalized sales volumes for the test period (T. 3457, Exh. 166), witness Stockwell normalized gas purchase requirements after verification of gas-supply data furnished by United (T. 3453-54). Checks of gas fields and a comparison of normalized requirements with actual 1953 data demonstrated the accuracy of the normalization (T. 3455, 3458, 3462, 3464, 3468). The gas requirements were normalized by fields, by districts, by areas, and further by purchases from non-affiliated producers (arm's length sales) and from Union (Exhs. 82-88). Where judgment as to the source of gas was vital, Stockwell relied on the experienced judgment of United's gas supply department personnel (T. 3741)."

As we have indicated heretofore, we have credited the testimony of staff witnesses relating to normalization of natural gas purchase requirements and sales volumes for the test period.

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[3] See Docket Nos. G-1465, G-1491, G-1571, G-1628, G-1820, G-1843, G-1879, G-1880, G-1904, G-1951, G-2064, G-2158, G-2258, G-2259, G-2416, G-2885, G-2889, G-4279, G-4885.

*Presiding Examiner's Opinion Filed July 18 1955*

The cost of purchased gas is extremely important in this case because in excess of $89,000,000 or over 60% of United's cost of service for the test period, represented the cost of natural gas purchased.



Union provided approximately 22% of United's natural-gas requirements for United's Monroe, Shreveport, Dallas, Houston and San Antonio operating districts for the test period.[5] Union is a wholly-owned affiliate of United Gas Corporation, as is United.

Prior to the Panhandle decision (Commission Opinion No. 269) the Commission determined the cost of natural gas where a natural-gas company itself, or an affiliated company was the producer, on the basis of actual operating expenses incurred in the production of the gas and allowed a return on the original cost of investment less accrued book depreciation. However, where a pipe-line company bought gas from an independent producer, the price paid to such independent producer was included as part of the pipeline's recoverable cost of service. Staff's presentation included cost of gas purchased from independent producers as of December 31, 1953 adjusted to calendar 1952, as part of United's cost of service.

During the course of this hearing, Mississippi's counsel stated that "We are not contesting the prices paid non-affiliated producers." Mississippi, however, in its brief objected to the inclusion in United's recoverable cost of service of sums paid by United to non-affiliated producers and to Union in the absence of affirmative proof that applications for certificates of public convenience and necessity and rate schedules had been filed pursuant

[5]While evidence was presented concerning the total amount of gas supplied to United, no evidence was presented concerning the percentage supplied to Union by the balance of the system for the test period.

**7808**

to Commission Order No. 174-A.

Mississippi's brief asserts (pp. 27, 28) that $17,000,000 out of the total of $89,218,255.00 represents cost of gas purchased by United from Union. A table at page 31 of Mississippi's brief shows that $10,340,348.00 represents cost of gas purchased from Union for the Monroe, Shreveport, Dallas, Houston, and San Antonio operating districts. The table shows cost of gas for other operating districts of United of $43,332,200.00, but contains no information concerning the percentage of gas supplied by Union. In referring to $17,000,000.00 as the cost of gas purchased by United from Union, Mississippi refers to page 3720 of the transcript. The transcript reference does not support Mississippi's statement as to the $17,000,000.00 amount and there is no evidence in the transcript as to the total specific amount of dollars paid to Union by United for the test period.

Although Mississippi apparently in one part of its brief included $17,000,000.00 as a sum which United was entitled to receive for gas purchased from Union, it objected in another part of its brief to the inclusion of cost of gas purchased from Union at any figure. In still another part of its brief, Mississippi shifted the emphasis of its objections from the prices paid non-affiliated producers for gas purchased to prices paid by United for gas purchased from Union. In this connection, Mississippi's argument may be summarized as follows:

**7809**

United executed numerous contracts with Union, many as far back as 1937. Between 1937 and June 7, 1954, numerous contracts and supplementary or amendatory contracts were entered into by these companies. Such supplementary

contracts, among other things, increased the price of gas per Mcf payable by United to Union. Mississippi claimed that United was limited in the amount which it is entitled to recover for cost of gas purchased from Union to the amount per Mcf set forth in initial contracts between United and Union, and was not entitled to include in its cost of service natural gas as priced and paid for by United in the supplementary or amended contracts. Mississippi points out that if its theory of gas pricing for United were applied here, the cost of service figures might be so reduced that they would preclude any rise in the level of United's rates.[26] Mississippi contends further that, on the basis of its analysis of the contracts between United and Union in the period between 1937 and 1953, covering gas from the Monroe, Shreveport, Dallas, Houston and San Antonio districts alone, United's cost-of-gas-purchased account has been inflated by over 4¾ million dollars, of which Mississippi is being asked to pay over $900,000.

**7810**

To support its contentions, Mississippi has cited a line of cases[27] which hold in substance that where affiliated companies enter into contracts and there is "an absence of arm's length bargaining between two corporate entities involved, and of all the elements which ordinarily go to

[26]Mississippi's brief, page 38.

[27]*Western Distributing Company* v. *Public Service Commission of Kansas, et al.*, 285 U. S. 119 (1932); *Smith* v. *Illinois Bell Telephone Co.*, 282 U. S. 133, 152-153 (1930); *Cities Service Gas Company* v. *Federal Power Commission*, 155 Fed. (2) 694 (8th Cir. 1946), cert. denied, 329 U. S. 773 (1946); *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 142 F. 2d. 943, 957 (10th Cir. 1944), cert. denied, 324 U. S. 629 (1946); *Natural Gas Pipeline Co.* v. *Slattery*, 302 U. S. 300, 307 (1937); *Dayton Power & Light Co.* v. *Public Utilities Commission (Ohio)*, 292 U. S. 290, 308 (1934); *United Fuel Gas Co.* v. *Railroad Commission of Kentucky*, 278 U. S. 300, 320 (1929).

fix market value" and where an increase of rates is sought, a regulatory agency or a court is justified in ignoring such contracts and should look to other factors to determine just and reasonable costs.

Mississippi has established that from 1937 to the present time United Gas Corporation has owned all the stock of both United and Union and that the power of United Gas Corporation to exercise its control over such companies has manifested itself through the election of interlocking directorates and the selection of joint officers.

If there has been an absence of arm's length bargaining in the making of the contracts between United and Union as there appears to have been, such absence is characteristic of both the



initial and the amendatory contracts. Accordingly, the cases relied upon by Mississippi do not support the conclusion that only the initial contracts, but not the amendatory contracts, should be considered valid. They establish that both initial and amendatory contracts should be ignored unless they are supported by objective criteria.

If the prices in contracts between Union and United are to be ignored, we must then look to other factors to determine what is fair, just and reasonable for United to obtain for natural gas acquired from Union. However, before embarking upon such determination, it appears advisable to consider at this time Mississippi's other contentions relating to cost of gas purchased.

Certain of Mississippi's contentions are made on an alternative basis. These contentions are to the effect that all of United's "gas purchases must be made pursuant to contracts legally filed and accepted by the Commission as rate schedules" or that "all of United's gas purchase costs are subject to investigation, cross examination as to the justifica

tion for the precise volumes and prices used and to possible whole or partial disallowance."

The inconsistency of the alternative contentions made by Mississippi is apparent when it is realized that the first alternative referred to above, if accepted, would require a conclusion that, absent filing pursuant to Commission Order 174-A, there could under the law be no recovery for payments made for purchased gas, at least for test period purposes, whereas under the second alternative mentioned,



there can be such recovery even though no filing whatever were made under Commission Order 174-A or any other filing rule or regulation of the Commission.

To support its contention that cost of gas purchased from non-filing producers cannot be included in United's recoverable cost of service for the test period, Mississippi cites as precedent *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U. S. 246, 251 (1951).

The Montana-Dakota case is wholly inapplicable to the instant situation. The issue involved in such case was whether an action would lie to recover losses alleged to have been sustained by petitioner in paying for service at filed rates when it and the respondent had an interlocking directorate and were under common control. The principle which was involved was that, where a rate is filed, accepted, or approved by the Commission, a customer company cannot be made to pay a different rate than the filed rate, nor, on the other hand, can it recover payments made under the filed rates (which allegedly were inflated) because acceptance of such filed rates was brought about by reason of petitioner's dominance by the common management of petitioner and respondent, and petitioner's consequent lack of independence and ability to protest. It was in this context that the cost in Montana-Dakota, said "It [peti-

tioner] can claim no rate as a legal rate that is other than the filed rate * * *."



This language was quoted by Mississippi in its brief, but a quotation relating to the inability of a litigant to recover alleged overcharges in filed rates which it accepted and paid is not applicable to the instant situation, where the value of the gas obtained has been established in these proceedings by objective standards. The facts involved in the Montana-Dakota are entirely different from the facts in the present case. Moreover, the principles of law involved and the language quoted from the Montana-Dakota case have no application here. It may also be pointed out that the Commission's rules relating to filing were not drafted to cover cases such as United's purchases from Union during the test period.

Certain other cases cited by Mississippi on this point in its brief are equally impertinent.[28] In general, it may be said that such cases stand for the proposition that when rate schedules are filed and accepted, then they are paramount to rights established by earlier franchises or contracts entered into between customers and the filing company, and also for the proposition that when a rate schedule is filed and accepted, no different rate may be charged.

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[28] *North Hempstead* v. *Public Service Corp.*, 231 N. Y. 442, 132 N.E. 144 (1921); *Public Service Commission* v. *Pavilion Natural Gas Company*, 232 N. Y. 143, 133 N. E. 427 (1921); *Kansas City Power & Light Co.* v. *Midland Realty Co.*, 338 Mo. 1141, 93 SW 2d 954 (1936) affd; *Midland Realty Co.* v. *Kansas City Power & Light Co.*, 300 U.S. 109 (1937); *Suburban Water Co.* v. *Borough of Oakmont* 268 Pa. 243, 110 A 778 (1920); *Duquesne Light Company* v. *Public Service Comission* 273 Pa. 287, 117 A 63 (1922); *Leiper* v. *Baltimore & P. R. Co.*, 262 Pa. 328, 105 A 551 (1918); *V & S Bottle Co* v. *Mountain Gas Co.*, 261 Pa. 523, 104 A 667 (1918), app. dis. 251 U.S. 544 (1919); *Harrison Electric Co.* v. *Citizens Ice and Storage Co.*, 149 Ark. 502, 232 S. W. 932 (1921); *Cotton* v. *Commonwealth Edison Co.*, 349 Ill. app. 400, Ill. N. E. 2d 363, 366 (1953).

**7814**

Neither the Mobile Gas Service case nor the Tyler gas case[29] is of assistance at this point in the proceeding because the basic issue is such cases related to the requirement of payment at increased rates subsequent to filing and before a hearing was had concerning the lawfulness of the increased rates which were sought.

Here, a determination is being made after a hearing on the merits. The plaintiffs in both Mobile and Tyler recognized, as did both courts of appeal, that the Commission after a hearing on the merits could fix the rates at a level which it determined to be just and reasonable, and which might be at variance with and in complete disregard of the contract rates. Here we are engaged in determining just and reasonable rates after a full and complete hearing.

The legal effect upon rate making in this case by reason of a failure to file either rate schedules or certificates of public convenience and necessity pursuant to Commission Order No. 174-A, as modified by any supplier of gas to United,[30] must be considered in the following context:

**7815**

Prior to the Phillips decision,[31] the Commission had exercised its jurisdiction under the Act principally to regulate companies primarily engaged in pipe-line operations and activities incidental thereto. In such cases where the pipe line was affiliated with a gas producer through common

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[29] *United Gas Pipe Line Co. v. Mobile Gas Service Corp. and Federal Power Commission*, 215 F. 2d. 883 (3rd Cir., Sept. 7, 1954), certiorari granted February 28, 1955; *Tyler Gas Service Co., et al. v. United Gas Pipe Line Co.*, 217 F. 2d. 73 (5th Cir., Nov. 24, 1954).

[30] No proof was adduced concerning filings by United's suppliers under Order 174-A.

[31] *Phillips Petroleum Company v. State of Wisconsin, et al.*, 347 U. S. 672.

control, or where a pipe line controlled a gas producer, only the pipe line filed applications for certificates of public convenience and necessity under Section 7 of the Act and rate schedules pursuant to Section 4 of the Act. Although the Commission exercised its rate-making powers with regard to determining how much an affiliated producer could get from the pipe line for gas which it produced and sold to such pipe line, the Commission did not require a separate filing by the producing affiliate under either Section 4 or 7 of the Act.

The Supreme Court, in Phillips, held that the authority vested in the Commission by the Act was broader than the Commission had theretofore exercised. The Court held, in substance, that the Commission had jurisdiction over sales of natural gas in interstate commerce for resale, and that the exclusionary provisions of Section 1 (b) of the Act relating to "the production and gathering of natural gas" did not encompass an exemption from the provisions of the Act for sales of natural gas for resale made in interstate commerce.

Prior to the Phillips decision, the Commission had adopted certain rules and regulations under the Natural Gas Act governing the



filing of rate schedules and certificates of public convenience and necessity by natural gas companies, viz., Part 154 —Rate Schedules and Tariffs, and Part 157—Applications for Certificates of Public Convenience and Necessity, Subchapter E—Regulations under the Natural Gas Act, Chapter I, Title 18, Code Federal Regulations. In general, it appeared that these regulations had been promulgated upon an assumption that the ambit of the Commission's jurisdiction was not as large or embracive as that which the Supreme Court in Phillips had found to exist. These regulations, which had been adopted long before June 7, 1954, when Phillips was decided, were principally designed for filings

by pipe-line companies. Moreover, a reading of the provisions of these regulations indicates that they were drafted primarily for application to companies which were much larger than many of those held by Phillips to be subject to Commission jurisdiction.

In an effort to provide as workable and simple a set of regulations as was reasonably possible for the several thousand persons engaged in the production and gathering of natural gas, who transported or sold such gas in interstate commerce and were held by Phillips to be subject to Commission jurisdiction, but who were not primarily engaged in the operation of an interstate pipe line, the Commission, on July 16, 1954 issued its Order No. 174 prescribing rules and regulations governing the filing of rate schedules and certificates of public convenience by persons subject to the Act under the Supreme Court's holding. On August 16, 1954, the Commission by the issuance



of its Order No. 174-A rescinded and superseded Order No. 174. Order No. 174-A was subsequently amended by Order No. 174-B issued by the Commission on December 17, 1954.

These new rules and regulations are limited by their terms to transactions and operations conducted on and after June 7, 1954, the date of the Supreme Court's decision in Phillips. These rules and regulations treat the rates of "independent producers" subject thereto which were in effect prior to June 7, 1954 as "initial" rates, and such rates are not subject to suspension except where increases above prices in effect prior to June 7, 1954 are involved. Moreover, the Commission's accounting requirements are not made applicable to filings thereunder.* The rules do not require

*The Commission's Uniform System of Accounts for Natural Gas Companies, among other things, requires all cost expense and revenue data submitted in support of filings be segregated and classified. The absence of accounting requirements suggests that the Commission's Uniform System of Accounts in its present form is not

persons subject thereto to justify the rates in effect prior to June 7, 1954 and filed thereunder, and there is no provision for a "roll-back" of rates charged by persons who filed pursuant to Orders Nos. 174-A and 174-B.

**7813**

It may also be observed that, while the Commission has authority to investigate rates subject to its jurisdiction under Section 5(a) of the Act, the determination of the reasonableness of prior unfiled rates and past increases in contract prices, for the purposes of recovery of sums of money for natural gas paid thereunder, is not a matter over which the Commission under the Natural Gas Act has any authority.

The Commission in its El Paso opinion[33] referred to its unwillingness to permit its opinion in Panhandle (Opinion 269) to exclude, in the future, consideration of other methods of valuing gas and then stated that "We are, however, presently of the view that such method as may be adopted in the future should be employed for both the independent producer and the pipe-line company."

The Commission is, of course, faced with many complex matters resulting from the Supreme Court's decision in Phillips particularly with regard to establishing principles applicable to fair and lawful determination of rates for producers who had believed that they were exempt from Commission jurisdiction under the exclusionary provisions of Section 1(b) of the Act. In connection with these problems, the Commission pointed out that "To facilitate the reaching of an informed opinion on this question, the Commission has issued a notice of proposed

readily applicable for use by an "independent producer" or by combination oil and gas producers and consequently could not be applied without revisions to companies subject to Order No. 174-A.

[33] *In the Matter of El Paso Natural Gas Company*, Opinion No. 278 (Mimeo ed. p 6, et seq.)

rule making inviting all interested parties including producers, gatherers, transmission companies, distributors, state commissions, municipalities, and representatives of consumer interests to submit their views to the Commission concerning principles and methods to be applied by it which could be used in regulating the price of natural gas sold by producers in interstate commerce for resale. Presumably such principles and methods could also be applied to gas produced by transmission companies."

It is in this context that Mississippi seeks, in effect, to impose a sanction upon United by excluding from its recoverable cost of service for the test period amounts paid by United to Union and to non-affiliated producers, by reason of United's failure to put in evidence showing that Union and other producers have made filings pursuant to Commission Order 174-A, as amended. Mississippi asks that the Presiding Examiner take official notice of Union's action against the Commission in the United States District Court for the District of Columbia[34] and asserts that Union, and possibly other producers have failed to file a rate schedule pursuant to Commission Order No. 174-A, as amended.

It may be that Union or other United suppliers may have become subject to the fines and penalties provisions of the Act by reason of their failures to file rate schedules under 174-A.[35] However, whether



such penalty provisions are or are not applicable to such producers, it does not follow therefrom that Mississippi or any other customer is entitled to have excluded from Uni-

[34] The Presiding Examiner takes official notice of *Union Producing Co. v. Federal Power Commission*, 127 F. Supp. 88 (D. C.).

[35] It should be made clear that the Presiding Examiner is not attempting to express any opinion that such provisions are or are not applicable to Union or any other producer.

ted's cost of gas purchased for the test period purchased from a producer who has decided to litigate the question of the validity of the Commission's order before complying therewith. Specifically it does not follow that if Union is unsuccessful at the end of the litigation it will not comply with the determination made by the courts. The imposition of a sanction such as the exclusion from United's recoverable cost of gas obtained from Union during the test period because of Union's failure to file or because some other producer may have failed to file rate schedules for gas which it supplied to United finds no warrant in the law. In this connection, it may be pointed out that even in the absence of any filing under Order No. 174-A, as amended, producers subject thereto may not under Section 7(b) of the Act abandon service to United without an order of the Commission. On the other hand, United cannot obtain natural gas without paying for it.

There was no good ground for granting Mississippi's application for a subpoena duces tecum addressed to a member of the Staff requiring him to compile a list of all United's producers who had filed under Order No. 174-A. The denial of such request did not, as Mississippi contends, deprive it of due process.

## 7821

As we have noted, one of Mississippi's alternative approaches to price determination was stated as follows: "*all* of United's gas purchase costs are subject to investigation, cross examination as to the justification for the precise volumes and prices used and to possible whole or partial disallowance." (Italics supplied.)[36]

This approach, if adopted, would result in the institution of hundreds of rate cases which could not even be presented for a considerable period of time because the investigation, which would have to be conducted by the Commission's

[36]Mississippi Brief, P. 6.

staff before institution of proceedings would necessarily be time consuming and, of course, statutory notice to producers before instituting hearings would be imperative. If this course were followed, these proceedings would be prolonged for several additional years. By the time it was determined which of United's suppliers were subject to the Commission's jurisdiction and what the rates of such suppliers should be, the rates charged by such suppliers in 1952 or 1953 would be of academic rather than functional value for purposes of rate determination.

As United's counsel stated in regard to this matter during the course of these hearings:

> "I am not in disagreement with what Mr. McAllister said. I am not in disagreement with what the Examiner said, nor what Mr. Fletcher said about getting into 600 rate cases. We are not asking for that. We do not intend to do it, and I think it would be a foolish thing and I think it is an illegal thing."



Following this "concession" by Mississippi's counsel Mississippi shifted the brunt of its attack from gas prices paid non-affiliated producers to prices paid Union. This matter was gone into at great length during the course of the hearings.

The approach of counsel to the Commission to establishing the figure of $89,218,255 for cost of gas purchased may be summarized as follows:

A properly qualified Staff Witness examined all contracts entered into between United and Union, and between United and other producers and found out what prices United was paying for natural gas under such contracts as of December 31, 1953. The witness applied such prices to normalized gas requirements for the test period and determined in his capacity as an accountant that United's cost of gas pur-

chased was $89,218,255.00. This figure of course included gas supplied to United by Union.

The inclusion in cost of gas purchased of amounts of gas from Union at the price per Mfc paid by United is challenged by Mississippi as unjust, unreasonable and unlawful, in part, for reasons already discussed. Mississippi also complained that while the Staff witness examined the contracts in question, he made no statement that he "consid-



ered such contract costs to be proper, fair, and reasonable." The Staff claimed that the contracts and prices contained therein were examined critically and were not considered perfunctorily or mechanically, as Mississippi claimed that they were.

It may be pointed out that determination of whether the prices contained in United's contracts with Union were "proper, fair and reasonable" is a matter for the Presiding Examiner or the Commission to decide on the basis of the evidence presented, and not a matter for the witness to determine. This is not to say that contentions made by the parties, including the staff, with regard to evidence or the law, are not entitled to consideration. They are, and they have been considered.

The Staff claimed that the prices determined upon for gas purchased from Union which went into United's cost of gas were founded upon substantial evidence. The evidence and legal considerations which the Staff considered applicable to prices of gas obtained from Union rested upon the relationship of such prices to prices paid to non-affiliated producers by United in the same districts.

It will be noted that the Staff witness who testified with regard to this matter prepared certain exhibits (82-88 inclusive) which were received in evidence. Examination of the exhibits shows that on a

**7824**

comparative basis United's gas purchase costs, insofar as gas obtained from Union is concerned, were not in excess of the prices paid in the same districts to non-affiliated producers, and on an overall basis were less than those paid by United to non-affiliated producers. In fact, the exhibits prepared by the Staff and introduced in evidence show that the weighted average price paid by United to its non-affiliated producers is substantially more than the average weighted price paid by United to Union, and this fact was not contradicted by any other evidence in the record.

Evidence introduced by United[7] shows that the average weighted prices paid by United to Union between 1948 and 1953 were lower than the average prices paid to non-affiliated producers, i.e., producers whose prices Mississippi does not challenge as being unfair, unjust or unreasonable.

While it is true that United's contracts with Union were not reached as a result of arm's length bargaining, the evidence presented shows that the prices contained in such contracts, when based upon objective standards unrelated to the relationship between United and Union, were not above a level which Mississippi has conceded to be fair, just, and reasonable for others, i.e., prices paid by United to Union were not above prices reached between United and non-affiliated producers as a result of arm's length bargaining.

**7825**

In its petition for rehearing filed November 23, 1954, following the issuance of Commission Opinion No. 277, Mississippi asserted that "The Commission erred in the use of the prices charged by Union Producing Company, an affiliate of United, for gas purchased from said affiliate, whereas the Commission should have determined the price that should

[7] See Exh. 161

be allowed in accordance with the principles established in the Panhandle decision (Opinion No. 269), and in refusing to determine the reasonableness of the prices paid by United to said affiliate and other producers."

There is no basis for concluding that if the Panhandle approach to price determination were applied here instead of the one that was adopted that there would be any reduction in the amount arrived at for gas obtained from Union.

Despite Mississippi's claim in its petition that the Panhandle approach to price determination should have been applied here, during the course of the hearing accorded the parties, one of Mississippi's Counsel appeared to shift its position on this point, taking the view that while Panhandle exemplified a justifiable legal theory of pricing for a company which produced its own gas, it was not applicable in this case because two different companies were involved, i.e., United and Union, and "When you have contract relationships those contract relationships control." Accordingly, it appeared that at the very same time Mississippi was arguing that "contract relationships control" it contended that they did not control because of the affiliations of the contracting parties.

## 7826

In the Panhandle case (Opinion No. 269) the Commission held that "ultimate public interest will be better served by permitting the pipeline company to receive for the gas which it produces a price reflecting the weighted average arm's length payments for natural gas in the fields (and sometimes from the same wells) where it is produced than through the application of the 'rate base' method to this commodity."

Although price determination as effected in Panhandle was somewhat different than the approach to price determination made by the Staff here, reference is made to Pan-

handle in this decision among other reasons because of Mississippi's reliance upon the principles of that case and, to point out, in addition, that Mississippi does not contend that the "rate base" approach to Union's production should be applied here. Reference is also made to the Panhandle case because Mississippi's statements in reference thereto demonstrate that it has accepted the basic principle of Panhandle, namely, that gas produced by a natural gas company had the same value as a commodity at the well-head as gas purchased by an independent producer, and that such value should be attributed to it in determining the rate to which the natural gas company was entitled for sales at distant point."" This principle which Mississippi has urged as being correct and which should be accepted here



is applicable not only to pipe line companies which produce their own gas, but to pipe line companies which obtain gas from an affiliate with which it is under common control.

It appears that both Mississippi and the Staff accept the proposition that gas produced by a pipe line company should be valued in analogous circumstances at the same price as gas obtained at competitive levels from independent producers. Moreover it appears despite protestations to the contrary that when Mississippi's contention are subjected to analysis, its basic complaint is not that the principles of Panhandle should not be applied here but that the manner in which those principles were applied in these proceedings was improper, i.e., only the specific approach made in Panhandle (Opinion No. 269) may be used. The method of valuing gas employed in Panhandle if applied here would not serve to reduce cost of gas purchased and thus to reduce rates to Mississippi and consequently its objections on this score as to cost of gas purchased are without merit.

*Presiding Examiner's Opinion Filed July 18 1955*

The Presiding Examiner finds that cost of gas for the test period was $89,218,255.00.

. . . .

[7881] FINDINGS AND CONCLUSIONS

Upon consideration of the entire record made in this proceeding, the evidence adduced, the briefs filed, and the matters relevant to a decision herein upon which the parties and participants have reached agreement, the Presiding Examiner *finds and concludes*, in addition to the findings and conclusions hereinbefore stated, that:

(1) United Gas Pipe Line Company is a person engaged in the transportation of natural gas in interstate commerce, and the sale in interstate commerce of such gas for resale, and is a natural gas company within the meaning of the Natural Gas Act.

[7883] (8) $113,628,905 is a just and reasonable amount for the total cost of service for United's entire system, including taxes and reasonable return for calendar year 1952, as adjusted.

. . . .

[7883] (9) $89,218,255 is a just and reasonable amount for cost of natural gas purchased by United for calendar year 1952, as adjusted.

. . . .

[7898] SAMUEL BINDER
Presiding Examiner

Filed: July 18, 1955
Issued: July 21 1955

. . . .

## Order Modifying Decision of Presiding Examiner and Affirming Decision As So Modified

### 8001

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners:

Jerome K. Kuykendall, Chairman; Seaborn L. Digby, Frederick Stueck and William R. Connole
190-2 Formal-Duplicate

In the Matters of

United Gas Pipe Line Company

Docket Nos. G-1142, 2019, *et al.* G-1508, G-2074, G-2210, G-2220, G-2378

On July 18, 1955, the Presiding Examiner certified and filed with the Secretary of the Commission the record herein, including his Initial Decision which was served upon all parties to these proceedings.

Subject to review by the Commission, the Examiner required that United Gas Pipe Line Company (United), within 20 days from the issuance of the Decision, make an appropriate filing with the Commission which would eliminate Rate Schedule PL-2 and Rate Schedule PL-3 of its FPC Gas Tariff, Original Volume No. 1, applicable to the delivery and sale of natural gas in interstate commerce by United to Mississippi River Fuel Corporation (Mississippi) for resale, and which would apply to Mississippi a single rate schedule which would be just, reasonable, not unduly discriminatory or preferential. By order issued August 4, 1955, herein, the Commission, among other things, extended the time within which United was required to make the appropriate filing to a date to be fixed by further order of the Commission.

*Order Modifying Decision of Presiding Examiner and Affirming Decision As So Modified*

Exceptions to the Decision were filed by Mississippi, Tyler Gas Service Company and City of Tyler, Texas (jointly), and counsel for the Staff of the Commission. Oral argument upon the exceptions was had before the Commission on September 29, 1955.

Upon consideration of all the evidence of record, the briefs filed, the Initial Decision of the Presiding Examiner, the exceptions thereto, the oral argument had, and the entire record, the Commission finds that the aforesaid Decision should be modified as hereinafter ordered, and that as so modified the Decision should be affirmed.

**8002**

The Commission *orders*:

(A) The second sentence in the first full paragraph on page 52 of the Decision (mimeo. ed.) and reading as follows:

"These rules and regulations treat the rates of 'independent producers' subject thereto which were in effect prior to June 7, 1954, as 'initial' rates, and such rates are not subject to suspension except where the increases above prices in effect prior to June 7, 1954 are involved."

erroneously suggests that rates in effect on June 7, 1954 and prior thereto when filed pursuant to the Commission's 174 series of orders are "initial rates" in all cases, and such sentence be and it is hereby eliminated from the Decision.

(B) Finding No. (2) appearing at page 117 of the Decision (mimeo. ed.) be and it is hereby modified to include reference to Section 5 of the Natural Gas Act under which the proceeding in Docket No. G-1142 was initiated, and so as to read as follows:

*Order Modifying Decision of Presiding Examiner and Affirming Decision As So Modified*

"The provisions governing United's rates, charges, classifications, and services appearing in United's FPC Gas Tariffs, Original and First Revised Volume No. 1, are subject to the jurisdiction of the Federal Power Commission under the provisions of Section 4 and Section 5 of the Natural Gas Act."

(C) United Gas Pipe Line Company shall, within twenty (20) days of the issuance of this order, make an appropriate filing consonant with the provisions of the order accompanying the Decision of the Presiding Examiner and appearing at page 120 thereof (mimeo. ed.).

(D) The Decision of the Presiding Examiner filed herein on July 18, 1955, and issued on July 21, 1955, as modified by this order, be and the same is hereby affirmed; and said Decision as so modified shall become effective as the decision of the Commission as of the date of issuance of this order.

**8003**

(E) To the extent that the exceptions filed by Mississippi River Fuel Corporation and by Tyler Gas Service Company and City of Tyler, Texas (jointly) are inconsistent with the order of the Commission herein, such exceptions be and the same are hereby denied.

By the Commission.

*J. H. Gutride,*
J. H. Gutride,
Acting Secretary.

Adopted: November 2, 1955
Issued: November 8, 1955

. . . .

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957.

**No. 568.**

UNITED GAS PIPE LINE COMPANY,

*Petitioner,*

*v.*

MISSISSIPPI RIVER FUEL CORPORATION AND FEDERAL POWER COMMISSION,

*Respondents.*

*ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.*

## BRIEF OF RESPONDENT MISSISSIPPI RIVER FUEL CORPORATION IN OPPOSITION.

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No.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957.

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**No. 568.**

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UNITED GAS PIPE LINE COMPANY,
Petitioner,

*v.*

MISSISSIPPI RIVER FUEL CORPORATION AND
FEDERAL POWER COMMISSION,
Respondents.

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## BRIEF OF RESPONDENT MISSISSIPPI RIVER FUEL CORPORATION IN OPPOSITION.

### Opinions Below.

The opinions below are not yet reported. The original opinion appears at pages 1a-17a and the supplemental opinion appears at pages 18a-21a of the Appendix to the Petition.

### Jurisdiction.

The jurisdictional requisites are adequately set forth in the Petition.

## Questions Presented.

1. Whether the Court below was justified in remanding to the Federal Power Commission a rate determination under the Natural Gas Act on the ground that there was not adequate substantiation of prices paid to a 100% affiliated producing company which also was a natural-gas company but had not filed its rates when both affiliates were considered as one and when no justification was shown for the prices beyond a mere listing of other area prices and when the Court below had ruled in *City of Detroit* v. *F. P. C.*, 230 F. 2d 810 (D. C. Cir. 1955), *cert. denied*, 352 U. S. 829, that some justification beyond prices paid to others must be shown to realize more than costs determined upon conventional rate base methods.

2. Whether there was properly before the Court below under §19(b) of the Natural Gas Act the question of the allowance of the full price paid to an affiliate when in the application for rehearing to the Commission, the Petitioner below challenged "the unquestioned acceptance of prices paid" by the natural-gas company to nonaffiliated producers as a test for determining the allowance for gas purchased from such affiliate and where such grounds were carried forward to the Petition for Review.

## Statute Involved.

The pertinent provisions of the Natural Gas Act (52 Stat. 821 as amended; 15 U. S. C. §717 *et seq.*) are set forth at pages 22a-26a of the Appendix to the Petition.

## Statement.

This case involves, in the words of the Court below, the "situation [where] there are several important factors not ordinarily present" (App. 19a[1]). The Petitioner is a natural-gas company. It buys a substantial amount of the gas which it sells in interstate commerce for resale from Union Producing Company ("Union"). Petitioner and Union have a common parent which owns 100% of each.

Union is also a natural-gas company as apparently conceded by the Petitioner[2], although, until after the instant

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[1] In this opposition brief, Respondent, Mississippi River Fuel Corporation, adopts the references in the Petition, i.e., the record certified from the Court below will be referred to as "R"; the Appendix to the Petition is referred to as "App."

[2] Counsel for Respondent have been advised by letter dated October 28, 1957, from Counsel for Petitioner as follows:

> "With reference to United Gas Pipe Line Company's petition at p. 3 line 11 where the words '(*not* a natural gas company)' appear with reference to Union Producing Company, we have just been informed that Union Producing Company has given notice to the Commission of its intention to file with it rates as an independent producer within the next few days, and therefore ask you to ignore the words quoted which may be deemed stricken."

In addition, on November 6, 1957 the Commission issued an order at its Docket G-10060 which was a show cause proceeding against Union and Petitioner in regard to Union's failure to file its rate schedules. In such order of November 6, the proceeding was postponed, the Commission reciting:

> "Union, on November 4, 1957, filed its answer to the aforesaid order to show cause. It states that upon full consideration of the order it decided to comply therewith and to file with the Commission Union's schedules of rates and charges for the sale of natural gas subject to the jurisdiction of the Commission. Likewise, Union states, it has decided to file the necessary applications for certificates of public convenience and necessity for operations and facilities subject to the jurisdiction of the Commission. The filings were tendered on October 31, 1957, and are in process of analysis by the staff of the Commission."

Petition was filed, contrary contentions had been made in respect to Union's status.

Throughout the period covered by this case (this being a refund case covering a past period only), Union had no rate tariff on file with the Federal Power Commission covering sales to United. The Court below held that in determining the reasonableness of the price paid by United to Union, the corporate fiction should be disregarded.

Respondent, Mississippi River Fuel Corporation ("Mississippi"), buys from Petitioner a substantial part of its natural gas supply which it in turn sells directly for consumption and for resale. During the course of the proceedings before the Commission and its Examiner, Respondent, Mississippi, had contended that the price to be allowed to Petitioner on its purchases of gas from its 100% affiliate, Union, should be the subject of some inquiry as to fairness. In apparent answer to this contention the Staff of the Commission introduced evidence which Petitioner accepted on its own behalf. This evidence was introduced mainly through two Staff witnesses. The first presented exhibits containing a cost of service study and testified that the price of the gas purchased by Petitioner from Union was on the basis of prices in force July 31, 1954 (R. 65). In being questioned as to the details of the prices this witness was unable to explain how they were arrived at and conceded that he had not done the work in compiling the prices (R. 66-67). He stated that the work papers upon which the prices were arrived at were prepared by the Company and the Staff of the Commission received them for the purpose of checking the contract prices and that this had in fact been done by another Staff man (R. 67). The fact that this first witness had not done the actual pricing work was conceded by Counsel for the

Commission Staff (R. 69). A second witness was then produced to testify in respect to the pricing of the gas (R. 69-70). This second witness gave the evidence upon which the Commission was later to justify the prices allowed, *vis-a-vis* Petitioner and Union. This witness merely took the prices which Petitioner paid in various areas of supply and entered these upon his work papers (R. 102-105). This represented the sum total of the comparison of the prices paid by Petitioner to Union and their justification for use by the Commission. The Examiner and the Commission sanctioned the use for the purposes of these rate proceedings of the prices paid by Petitioner to its 100% affiliate Union, even though it was shown that such prices allowed included increases which Petitioner gratuitously offered to Union (R. 322-326).

Respondent, Mississippi, petitioned for rehearing of the Commission decision claiming *inter alia* as follows (R. 955):

> "Any adequate protection of the public interest present here and in other rate making proceedings requires something more than the unquestioned acceptance of prices paid by the same purchaser to nonaffiliated producers as a sufficient test for the determination of value of the gas purchased from Union.
>
> "The Examiner in his Decision approved by the Commission admits that the *Panhandle* method was not used by United, the Staff, or by the Examiner. The sole test was whether the prices paid by United to Union were above the prices paid by United to nonaffiliated producers.
>
> "If a proper record is to be made to support the final rates recommended by the Examiner and approved by the Commission herein, additional evidence as to the 'fair field,' 'market,' or 'commodity

value' for Union produced gas must be introduced in these proceedings."

The Respondent, Mississippi, in its petition for review in the Court below averred the following:

"(1) The Commission erred in allowing in full in United's cost-of-service the gas purchase costs represented by United's purchases from Union Producing Company, a 100% affiliate of United, in certain major Northern and Gulf Coast Area gas fields.

"(2) The finding that the prices paid to Union Producing Company, a 100% affiliate of United, under contracts not made as a result of arm's length bargaining were proper, fair and reasonable is not supported by substantial evidence and is against the weight of the evidence.

"(3) The finding that the prices paid to Union Producing Company, a 100% affiliate of United, under contracts not made as a result of arm's length bargaining, were fair, just and reasonable because they were not above prices paid to nonaffiliated producers is not supported by substantial evidence and is against the weight of the evidence."

The Court below reversed the Commission on allowing the prices paid by Petitioner to Union on the ground that the mere comparative prices used to justify this allowance was not a sufficient test. After pointing out that there are "several important factors not ordinarily present in this case", the Court below stated that the transactions between Petitioner and Union were not at arm's length and, in view of the peculiar corporate relationship existing, the Court pierced the corporate veil and treated Union and Petitioner as one. By so doing the Court below brought the case squarely within the requirements which it had prescribed in *City of Detroit* v. *Federal Power Commission*, 230 F. 2d

810 (1955), where weighted average arm's length prices were used by the Commission to justify the price for a natural gas company's own production and where the Court below remanded because sufficient evidence to justify such pricing method was absent. This Court denied *certiorari*. 352 U. S. 829.

## ARGUMENT.

### I.

### There is no important Federal question.

The facts in the instant case clearly demonstrate that the Court below did not impinge upon any delicate area of the administrative tribunal, *vis-a-vis*, the reviewing court. In reality, the Court below acted upon an administrative determination unsupported by substantial evidence of record.

Even the most casual reading of the opinion below will demonstrate that fact. For instance, in speaking of the price allowed on account of the purchases from Union, the Court stated:

> "A mere comparison of such prices with prevailing prices would not sufficiently justify the transactions" (App. 19a).

Again the Court below held:

> "We rejected this use of the field price [in *Detroit*], because the Commission record did not show that such an allowance was reasonably necessary to serve any stated ends of the Natural Gas Act. A 100 per cent affiliate stands in the same position as does the integrated producing 'arm' of a pipeline company. Under the doctrine of the *City of*

> *Detroit* case United could not, on the record as it is now before us, use as costs the fair field price of gas produced by its affiliate, Union; a reconsideration by the Commission under the principles laid down in that case would be necessary" (App. 19a-20a).

And again:

> "To be included in United's costs, increases in the interaffiliate prices must have some factual economic justification * * * we do say that the whole of such benefits, as measured by increasing field prices, cannot be assigned to the stockholders by unexamined increases in the interaffiliate prices accepted as costs of the affiliate-purchaser" (App. 20a-21a).

It is apparent that the Court below performed a prime reviewing function, *i.e.*, it remanded because of the lack of substantial evidence to sustain the Respondent Commission's finding on the price allowed Petitioner for the interaffiliate purchase. This clear duty of a reviewing court has long been recognized and is clearly spelled out in 19(b) of the Natural Gas Act:

> "The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive."

It is clear, therefore, that the Court below did not substitute its judgment for that of the Commission. It did no more than declare that the record did not support a Commission finding. Having exposed the error, the remainder was properly left to the Commission in the following words:

> "We do not hold that a full-blown inquiry into the rates of Union is necessary. Subsequent developments in the proceeding may or may not indicate such a necessity" (App. 21a).

## II.

**Petitioner seeks reversal of this Court's previous denial of certiorari in the *Detroit* case.**

In essence Petitioner seeks review of *City of Detroit* v. *F. P. C.* where this Court denied *certiorari* in 352 U. S. 829. The only difference between *Detroit* and the instant case which Petitioner points to is the contention, adopted by the Commission, that the comparative prices were of higher stature than those involved in *Detroit* (Petition, p. 13). This apparent difference, however, is purely illusory since in *Detroit* the Court below expressly accepted "as supported by substantial evidence the findings of the Commission regarding the weighted average arm's length prices paid at the wellhead." 230 F. 2d at 814. The quality of the comparative price used in *Detroit* was not the reason for the remand in that case.

The Court below in the instant case treated Union as Petitioner's producing arm. Having done so, the Court then went directly to and imposed the requirements of *Detroit*. Petitioner recognizes this when it states (Petition, p. 12):

> "The Court below directed the Commission to make a new inquiry under the 'same course of reasoning' it followed in *City of Detroit* v. *Federal Power Commission* (1955 D. C. Cir.) 230 F. 2d 810, cert. den. 352 U. S. 829 * * *."

Petitioner claims for its cause the basis used for pricing Union's gas. It claims a high degree of reliability for such prices which the evidence does not support. The evidence shows that the prices used to justify the allowance to Petitioner were those paid by Petitioner for its total supply. Any increase in price which Petitioner gave to an unaffiliated supplier it gratuitously undertook to pay Union.

The evidence is clear that there was no critical appraisal of comparative prices but instead the prices paid to all suppliers were listed and the mere listing of prices no lower than those paid to Union was taken as justification for the allowance on the interaffiliate sales. This was tantamount to allowing on this meager basis, Petitioner a price which it paid to others. Thus *Detroit* was directly in point and was dispositive of the issue.

## III.

**Respondent, Mississippi, did effectively preserve the point upon which the Respondent Commission was reversed.**

Petitioner contends that the point upon which the Court below reversed the Commission was not adequately preserved in the application for rehearing as required by §19(b) of the Natural Gas Act. The policy of such requirement is that an administrative agency should be apprised of the question presented upon review, i.e., notice. It is readily apparent from the record that such notice was given. This Court in *May Department Stores Co.* v. *N. L. R. B.*, 326 U. S. 376, expressly applied the test of whether an ". . . objection was specifically sufficient to apprise the Board of the question now presented". With this policy in mind we must refer to a portion of the application for rehearing addressed to the Commission which Petitioner does not quote wherein Respondent, Mississippi, stated:

> "Any adequate protection of the public interest present here and in other rate making proceedings requires something more than the unquestioned acceptance of prices paid by the same purchaser to nonaffiliated producers as a sufficient test for the determination of value of the gas purchased from Union."

This directly comports with the statement of the point upon which the Court below reversed, i.e. the Commission's allowance as a cost of service of the full price paid for gas by Petitioner to its 100% affiliate, Union. Indeed, to carry the contention of the Petitioner to its logical conclusion would mean that a party to an appellate proceeding may be foreclosed from citing the latest judicial pronouncements upon the ground for which review is invoked. Analysis will indicate that Petitioner objects to the fact that at the time the administrative proceedings had been completed the determination of the Court below in *Detroit* had not yet issued. The *Detroit* case, however, like the instant case, dealt with the allowance in the cost of service for produced gas. Matching this fact with the fact that Respondent, Mississippi, had averred that the protection of the public interest in the instant proceedings required more than the unquestioned acceptance of other prices, indicates a clear anticipation of the *Detroit* ruling, or at least in total required an exact adherence to the Commission's ruling, giving rise to the *Detroit* review.

In any event there was a precise exception to the Commission's treatment of the cost to be allowed to Petitioner on account of its acquisition of gas from its 100% affiliate. Certainly the Commission was not taken by surprise by what the Court did. Nor was it taken by surprise in the light of the rehearing application since the point in substance at least was expressly made to the Commission before the *Detroit* case issued. The opinion in *Detroit* did issue on December 15, 1955—eight days after the application to the Commission for rehearing but three weeks before the Commission's Order denying rehearing. It is apparent that the conclusion of the Court below that:

> "The Petitioner's [Respondent, Mississippi's] application for rehearing specifically included this

point. We do not read *Federal Power Comm'n* v. *Colorado Interstate Gas Company*, 348 U. S. 492, 99 L. Ed. 583, 75 S. Ct. 467 (1955) as requiring that the application for rehearing cite every case relied upon before the Court of Appeals."[3]

is correct.

## Conclusion.

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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[3] Significantly one of the panel which decided the instant case in the Court below was the Honorable Warren Burger, who, as Assistant Attorney General, had successfully urged the point involved in the *Colorado Interstate* case. Certainly he must have been aware of the issue now posed by Petitioner as a ground for granting certiorari.